IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.21 OF 1998
WITH
CROSS OBJECTION (S) NO. 1102 OF 1998

Lady Ramabai W/o. Parashuram Bhau
Patwardhan, Age 85 years,
Resident of Parashuram Niwas,
Tarabai Park, Kolhapur
since deceased,
by her legal representative
Mrs.Vijayadevi Vasantrao Deshpande
since deceased
through her heirs/legal representatives.

1. Vasantrao Dhundiraj Deshpande
   Age about 76 years,
   Occ: Retired Army Officer,
   Agriculturist,
   R/o.E/24, Tarabai Park,
   'Parshuram Niwas,
   Kolhapur-416 003.

2. Vinaykumar Vasantrao Deshpande,
   Age about 30 years
   Occ: Agriculturist,
   R/o.E/24, Tarabai Park,
   'Parshuram Niwas,
   Kolhapur-416 003.

.. Appellants
(Plaintiffs in
the suit)

Vs.

1. Pranaya Parshuram Patwardhan
   Age about 23 years.

2. Pratik Parshuram Patwardhan
   Age 21 years.

3. Lailaraje w/o. Parashuram Patwardhan
   Age 50 years.

4. Ramchandra Parshuram Pandit Amatya
   Alias Bawdekar
   'Raj Prasad' E/25 Tarabai Park
   (Opp. Income Tax Office), Kolhapur.

5. Indumati Shankarrao @ Appasaheb
Patwardhan (since deceased by heirs and
Legal representatives)

5(a). Smt. Baurawa Sangappa Kadapatti
Adult, Occ: Household.

5(b). Jay Sangappa Kadapatti
Adult.

5(c). Rajiv Sangappa Kadapatti
Adult.

5(d). Renuka Sangappa Kadapatti
Adult.

5(e). Sanjay Sangappa Kadapatti
Adult.

All Residing at 6-A Boat Club Road,
Pune-411 001.

6. Aditya Pranay Patwardhan
Adult, Resident of 1 'Maze Ghar'
Koregaon Park, Pune.

7. Sou. Pravasini Singh @ Sawhoney
Occ: Household(Meera Hsg. Soc. Near
C.D.A. Office, Pune.)
C/o. Lt. Col. Mohansingh Sawhoney
Nermus Heritage Nagar Road,
Aga Khan Palace, Pune. .. Respondents
(Defendants in
the suit)

Mr.N.V.Walawalkar with Mr. A.M. Kulkarni for the Appellants.

Mr. Paritosh Jaiswal i/b. M/s. Kanga & Co. for Respondent Nos.1 and 6

Mr. A.Y. Sakhare, Sr. Adv. with Mr. N.J.Patil for Respondent No.2.

Mr. R.A. Thorat for Respondent No.3.

Mrs. Anita A. Agarwal for Respondent No.5A to 5E.

Mr.S.V. Sadavarte for Respondent No.4.

CORAM: H.L.GOKHALE &
ROSHAN DALVI,JJ.

DATE OF RESERVING THE JUDGMENT : 2ND SEPTEMBER 2005

DATE OF PRONOUNCING THE JUDGMENT: 23RD DECEMBER 2005

JUDGMENT : (Per Gokhale, J.)

1. This is a First Appeal filed by the original Plaintiffs against the Judgment and Decree of the Civil Judge (S.D.) Kolhapur dated 1st May, 1997 dismissing Plaintiffs' Special Civil Suit No.18 of 1979 and allowing the Defendants' counter claim. The original Plaintiff - Lady Ramabai was the second wife of late Sir Parshuram Bhau Patwardhan, the erstwhile ruler of Jamkhandi, a Princely State situated in District Bijapur, now in State of Karnataka. She used to reside in a palatial property known as Parshuram Niwas at Kolhapur, which belonged to the estate of her deceased husband. She had filed the said suit against the original Defendants seeking a partition and possession of immovable and movable properties from the estate of her deceased husband situated at various places including at Kolhapur and Pune and this Parshuram Niwas to herself. The counter-claim claimed the Parshuram Niwas property for the concerned

Defendants, the heirs of the said Sir Parshuram Bhau from his first wife. This counter-claim has been allowed and the suit has been dismissed under the impugned decree. The heirs of Lady Ramabai have filed this appeal whereas the concerned Defendants have filed their cross-objections to the extent there are findings adverse to them in the impugned judgment. For convenience, the Appellants shall be referred to as the Plaintiffs and the Respondents as the Defendants as mentioned in the suit.

2. The parties are stated to be members of a joint Hindu family (HUF). The Plaintiffs as well as the Defendants claim from a common ancestor, the said Sir Parshuram Bhau Patwardhan Rajesaheb of Jamkhandi (known as "Sir Parshuram Bhau") who died in 1924. Sir Parshuram Bhau had married one Ramabai known as the Senior Rani who had predeceased him in 1907. After her death he married a lady also named Ramabai but known as Lady Ramabai, the Junior Rani (the original Plaintiff).

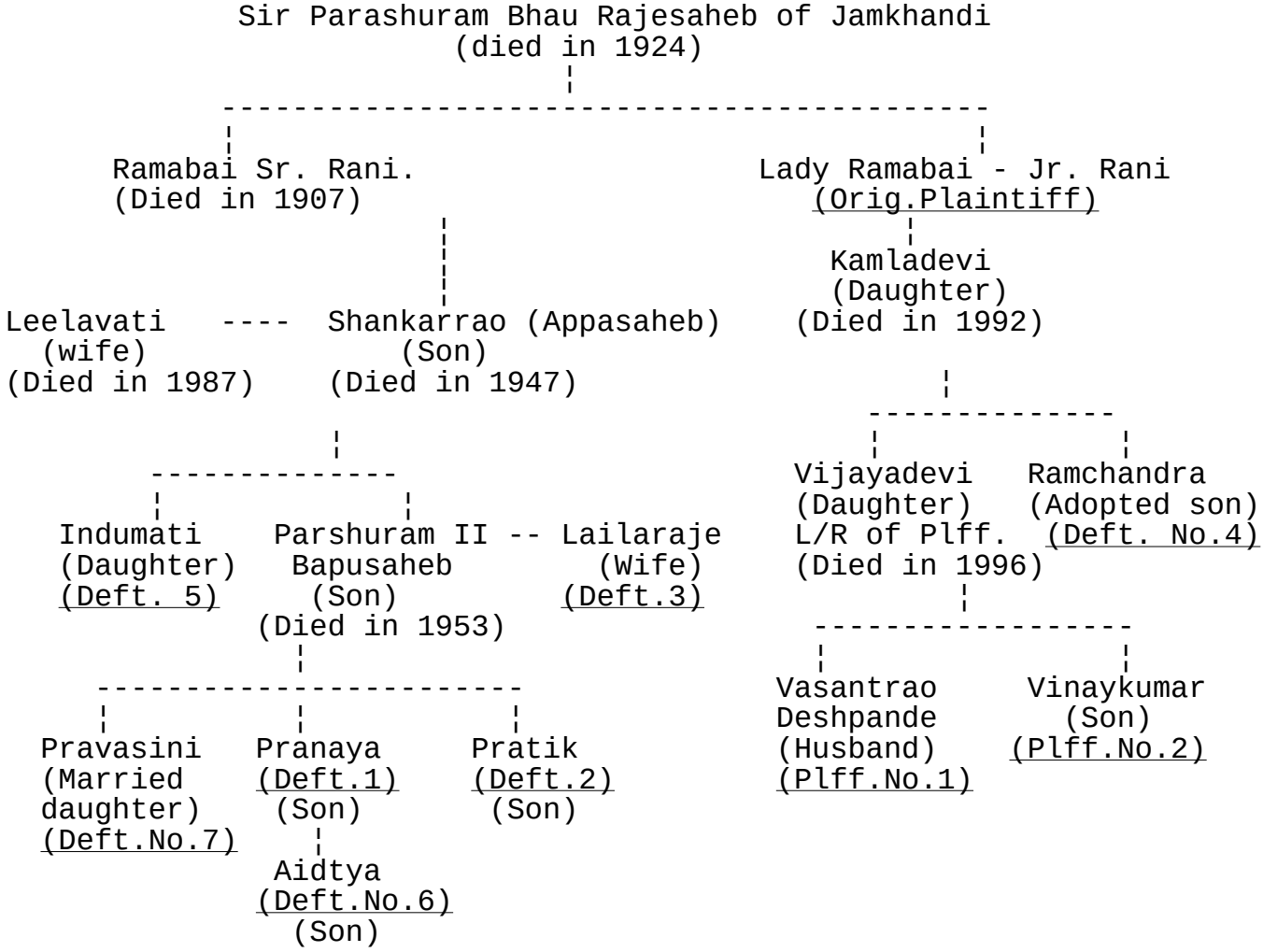
3. Sir Parshuram Bhau left behind him from the marriage with his first wife only one son Shri Shankarrao Appasaheb (known as "Shankarrao") who died in 1947. Shankarrao left behind him his wife Leelavati, one daughter Indumati (Defendant No.5) and one son. This son

Parshuram II died in 1953 leaving behind him his wife Lailaraje (Defendant No.3), one married daughter Pravasini (Defendant No.7) and two sons. These two sons Pranay and Pratik are the original Defendants 1 and 2. These Defendants 1 to 3 are the main contesting Defendants and shall be referred as "the Defendants". The son of Defendant No.1 Aditya is joined as Defendant No.6. The Defendant Nos.5 to 7 have been joined as party Defendants later though the Plaintiffs contend that they are not the members of the HUF and are not entitled to any of the HUF properties and are only joined by way of caution to obviate the plea of non-joinder of necessary parties.

4. The original Plaintiff Lady Ramabai died in 1988 during the pendency of the suit. She had one daughter Kamladevi who died in 1992. Kamladevi left behind her one daughter Vijayadevi and one adopted son Ramchandra (who has been joined subsequently as Defendant No.4, but with whom the Plaintiffs' dispute has been settled). The original Plaintiff executed her last Will and Testament under which she bequeathed her entire estate to her grand-daughter Vijayadevi who died in 1996. After her death her husband Vasantrao Deshpande and her son Vinaykumar have been brought on record as the present Plaintiffs 1 and 2 respectively. They are the Appellants

herein, being the heirs of the original Plaintiff.

5. The genealogy of the family of Sir Parshuram Bhau shows the relationship amongst the concerned persons as follows:-



6. The original Plaintiff claims to be a member of the HUF of her husband Sir Parshuram Bhau. She filed this suit for partition and possession of 1/4 share in the joint family

property of the HUF consisting of herself and Defendants 1, 2 and 3. The property sought to be partitioned by the Plaintiff by metes and bounds consisted of immovable property shown in Schedule A to the Plaint, and any other property that would be added subsequently to the said Schedule. Schedule A to the Plaint showed three immovable properties (1) Parshuram Niwas at Kolhapur under CTS No.24-A to 24-G which was then valued at Rs.93,000/-, (2) Municipal House No.1 at Koregaon Park, Pune known as "Maze Ghar", and (3) Agricultural lands at Lohagaon at Pune. Schedule "B" consisted of movables and under that it was mentioned - "At present not known".

7. It has been the original Plaintiff's case that she was not paid any maintenance from the family estate. She has however set out maintenance amount paid to her as the Dowager of Sir Parshuram Bhau out of State funds and as bequeathed by him in his last Will and Testament dated 19th January 1918.

8. The original Plaintiff was widowed in 1924. At that time her step son Shri Shankarrao was minor aged about 16 years. Since Sir Parshuram Bhau was the Rajesaheb of Jamkhandi, Shri Shankarrao became the Raja of Jamkhandi during his minority. The original Plaintiff was therefore, appointed Regent in which capacity she served the State for a

period of 2 years until 1926 when Shri Shankarrao attained majority.

9. It is her case that she continued to reside in the said bungalow known as Parshuram Niwas belonging to the HUF free of rent as a widow in the joint family since prior to 17th June 1956 and thereafter and the same was in her possession all throughout. The Plaintiffs therefore claim that the original Plaintiff became an absolute owner of the said property Parshuram Niwas under the provisions of Section 14(1) of the Hindu Succession Act, 1956 which came into force on 17th June 1956 and which provides that any property possessed by a female Hindu whether acquired before or after the commencement of this Act shall be held by her as a full owner and not as a limited owner.

10. It is not disputed that Defendants 1, 2 and 3 have executed a partial partition of the HUF properties between themselves in 1973 (There is shown to be another such partition in 1956, with which this suit is not concerned). Hence, as a Hindu widow in a joint Hindu family the original Plaintiff demanded and is claiming her share in the family property upon the said partition.

11. It is seen from the Plaint that the original

Plaintiff only sued for allotment and possession of her share in the HUF properties upon Defendants 1,2 and 3 having executed a partial partition. It is further seen therefrom that it was the case of the original Plaintiff that she makes a distinction and states that she was not maintained out of the family estate (though she was maintained out of the State funds) and that this was contrary to the bequest made by her husband Sir Parshuram Bhau in his Will dated 19th May 1918.

12. The original Plaintiff executed her last Will and Testament during the pendency of the suit in 1980 leaving behind her entire estate to her grand daughter Vijayadevi. The original Plaintiff expired in 1988. The said Vijayadevi was brought on record of the suit as the Plaintiff upon the cause of action surviving to her under that testamentary disposition. Vijayadevi expired in 1996. The present Plaintiffs who are her heirs and legal representatives being her husband and her son have been brought on record upon the right to sue surviving to them.

13. The Plaint has been amended from time to time. Under the amended Plaint the present Plaintiffs claim a declaration that the original Plaintiff was the absolute owner of the property known as Parshuram Niwas belonging to the HUF, she having resided therein prior to 1956 in her capacity as the widow of the joint family in lieu of her right to

maintenance. They therefore, claim her absolute ownership rights in the said property under Section 14(1) of the Hindu Succession Act. The Plaint has been accordingly amended for a declaration of absolute ownership and alternatively for partition. The Plaint has later been further amended to claim 1/2 share in the HUF properties in the place and stead of the 1/4 share claimed by the original Plaintiff. This amendment is based upon the claim of the original Plaintiff as a Hindu widow under a Local Act of the erstwhile State of Jamkhandi being Jamkhandi State Act I of 1937.

14. In 1982, during the pendency of this suit and during the life time of the original Plaintiff Defendant No.1 had filed Suit No.23 of 1982 in the Court of Munsiff at Jamkhandi against Defendants 2 and 3 for injunction restraining them from dealing with the unpartitioned HUF properties. The original Plaintiff applied for being joined in that suit as a necessary party. However, Defendant No.1 withdrew that suit. Nevertheless from that suit the original Plaintiff obtained for herself the information concerning further immovable and movable properties of the HUF hitherto unknown to her. Consequently by way of a further amendment the original Plaintiff added those properties as Schedules A-1, A-2, B-1, B-2, B-3, B-4, B-5, B-6, B-7 and B-8 for partition and possession.

15. It is accordingly seen that Plaintiffs Nos.1 and 2 claimed 1/2 share in all the movable and immovable properties belonging to the joint family of the original Plaintiff and Defendants 1,2 and 3 by partition, allotment and consequent possession thereof. The Plaintiffs also claim the declaration and absolute ownership of the property in Schedule A-1 of the Plaint which mentions the Parshuram Niwas.

16. Defendant No.1 filed his written statement denying the original Plaintiff's claim for partition. (i) He contended in his written statement that the original Plaintiff was entitled to maintenance and was paid maintenance from the time of the death of her husband until her death. He has disputed that the amount of maintenance was paid from the State funds and not from the family estate. He also disputed the Plaintiffs claim of having taken away from her the ornaments given to the original Plaintiff at the time of her marriage as her Stridhan. He has disputed the fact of the HUF of the original Plaintiff with the Defendants 1,2 and 3. He has disputed original Plaintiff's claim of residence in Parshuram Niwas in her capacity as the widow of the HUF. It is his case that the original Plaintiff was allowed to live in the said house on humanitarian consideration and only as his licensee gratis. He has

admitted the execution of the partial partition amongst Defendant Nos.1 to 3 but disputed the original Plaintiff's right to claim her share thereupon. (ii) He has claimed absolute ownership to all the properties of the HUF which earlier belonged to his father Parshuram II as the Late Ruler of Jamkhandi upon the merger of the said State in the Union of India in 1948. He claims to have been regranted, free of any encumbrances, innumerable properties including the suit properties. He has further claimed that those properties were never the properties of the joint family in the hands of the Ruler. He has disputed the rights of any other members of the Royal Family to claim any share in any of these properties. Accordingly he claims all the properties under the Rule of Primogeniture. He has however claimed to have purchased certain agricultural lands claimed in the suit along with Defendant NO.2 in 1963 during the minority of these Defendants. He has further claimed possession of Parshuram Niwas and a legal right therein consequent upon the fact that it stood in his name. Under the partial partition he claims that the said property was allotted to Defendant No.2 and thereafter stood in the name of Defendant No.2.

17. Defendants 2 and 3 in their written statement have claimed that the suit properties were never joint family properties and that the original Plaintiff had no share in

any of those properties. They have set out the maintenance amount paid to the original Plaintiff by the Government free of any taxes. They claim that the original Plaintiff was provided accommodation in a part of the main bungalow of Parshuram Niwas on humanitarian grounds to stay therein during her life time free of rent. They have disputed the original Plaintiff's claim for partition of any of the movable and immovable properties. They claim that the Plaintiff resided in Parshuram Niwas along with the Defendants and was not in exclusive possession thereof (They further claim that the original Plaintiff lived in an undefined portion of Parshuram NIwas and hence could not bequeath her undefined share to her grand daughter). They further claim that because a specific and limited bequest is made in favour of the original Plaintiff under the Will of Sir Parshuram Bhau, she (as also her daughter) are not entitled to claim anything more and are divested of all other properties.

18. In their additional written statement Defendant Nos.2 and 3 have contended that upon the death of the original Plaintiff's husband in 1924 the entire property passed by survivorship to Shri Shankarrao as the sole surviving co-parcener. They have contended that the original Plaintiff received maintenance allowance under the Will of her husband

dated 19th January 1918 and that her residence in Parshuram Niwas was because of the compassionate gesture. She was put in possession in a part of the bungalow and that was to be only during her life time and hence have denied her claim of absolute ownership under Section 14(1) of Hindu Succession Act, 1956.

19. Defendant No.2 has filed a counter claim for possession of Parshuram Niwas from Plaintiffs upon the ground that the original Plaintiff was allowed to live in the said bungalow only on humanitarian considerations and as a gratuitous licensee. He claims his title pursuant to the allotment of Parshuram Niwas to him in the partial partition between Defendants 1, 2 and 3 executed in 1973.

20. The Plaintiffs have denied the Defendants' claim of possession to Parshuram Niwas by filing a reply to the counter-claim.

21. The learned Civil Judge (S.D.) Kolhapur has dismissed the Plaintiff's suit with costs and has allowed the counter claim of Defendant NO.2 with costs. The learned Judge has framed a number of issues relating interalia to the original Plaintiffs' possession in Parshuram Niwas, the original Plaintiffs' claim of partition and stridhan, which alone are

disputed in the appeal (Other issues, including the issue relating to the birth/adoption of Plaintiff No.2 are not pressed by the Defendants in this appeal - Plaintiff No.1 being entitled to sue whatever be the legal status of Plaintiff No.2).

THE POINTS ARISING FOR DETERMINATION:

22. The lis between the parties requires determination of mainly 3 points:-

(i). The Plaintiffs' claim of partition of the suit properties as joint family properties belonging to the HUF (of which the original Plaintiff was the member) and the claim for 1/2 or 1/4th share.

(ii). The Plaintiffs' independent claim of absolute ownership of Parshuram Niwas stated to be in her possession in lieu of her right to maintenance since prior to 1956 (in view of Section 14(1) of the Hindu Succession Act, 1956).

(iii). The Plaintiffs claim to Stridhan.

23. The Plaintiffs claim of partition of the HUF

properties is largely based upon the actual partition between Defendants 1,2 and 3 (which can only be of HUF properties) and the suit filed by Defendant No.1 against Defendants 2 and 3 in 1982 showing various other properties claimed by him. It will have to be seen whether the properties claimed in that suit can be taken to be HUF properties to allow the Plaintiffs claim of partition and the allotment of the 1/2 share to them. That apart, it will have to be examined as to whether the original Plaintiff as a member of the HUF can claim a share on such partition.

24. The Plaintiff's claim of absolute ownership to Parshuram Niwas is based entirely upon documentary evidence contained in the correspondence between the original Plaintiff and the Administrator of the Estate of Sir Parshuram II during the minority of Defendants 1 and 2. The correspondence is admitted. In fact both the parties have separately relied upon it. Though both parties have led oral evidence on this score, it stands excluded by the said documentary evidence.

25. The Plaintiffs' claim to stridhan has to be considered upon the correspondence with regard thereto.

26. To determine the Plaintiff's aforesaid rights, it

would be material to first set out the admissions of facts by both parties as emerging in this case and the extent to which the parties defer. They are as follows:-

.(i) The relationship of the parties shown in the genealogy chart.- The same is admitted, though however the original Plaintiff's claim of being a member of the HUF of Defendants 1,2 & 3 is denied by defendants.

.(ii) The properties shown in the schedules annexed to the Plaint (original as well as amended) as the properties belonging to the family of Sir Parshuram Bhau - The Plaintiffs claim these properties as belonging to the HUF of which the original Plaintiff was the member. The Defendants claim these properties as the absolute properties of the Ruler of Jamkhandi State.

.(iii) There is no dispute on the dates of the births and deaths of the members of the family of the Ruler of Jamkhandi Sir Parshuram Bhau.

.(iv) The execution of the Will of the Ruler of Jamkhandi Sir Parshuram Bhau on 19.5.1918 marked

Exhibit-590 in evidence is admitted though the parties defer on the effect thereof.

.(v) The correspondence entered into between the original Plaintiff and the Administrators of the Estate of her deceased husband, Sir Parshuram Bhau is admitted, though the parties defer on their interpretation thereof.

.(vi) The residence of the original Plaintiff in the property Parshuram Niwas at Kolhapur from 1955 - *it is the Plaintiffs case that this residence has been granted to her by the Administrator of the Kingdom of Jamkhandi one Mr.Narayan Dandekar I.C.S. in lieu of maintenance. It is the case of the Defendants that the residence has been provided to her on humanitarian grounds by way of a gratuitous licence for her life time in her capacity as their great- grandmother and the Rani of the Late Ruler of Jamkhandi, Sir Parshuram Bhau. The Plaintiffs claim exclusive possession in the entire property; on the other hand the defendants claim joint possession by certain overt acts.*

.(vii) The receipt of maintenance by the original

Plaintiff in a sum of Rs.1250 per month initially, which was later increased to Rs.1600/- per month, received by her during her life time - *It is the case of the Plaintiffs that that amount having been settled upon her under the Will of the original Plaintiff's Late husband and paid out of the State Funds, initially by the State of Jamkhandi and later by the Union of India, was not the maintenance paid to her in her capacity as his widow. It is the case of the Defendants that the amount of maintenance has been paid to her in her capacity as the Hindu widow under the Jamkhandi State Act I of 1937. That having been done, it results in disentitling her to claim residence.*

. The claim of the Plaintiffs will have to be examined in the backdrop of these admitted facts and the extent of divergence.

THE CLAIM OF PARTITION AND THE ORIGINAL CLAIM FOR 1/4TH SHARE:

27. The original Plaintiff in the original Plaint claimed 1/4 right in the joint family property consisting of the Plaintiffs and the Defendants. She mentioned in Schedule-A to the Plaint 3 immovable properties mentioned above. She

annexed as Schedule-B her claim to movable properties which was then not known to her. She applied for leave to add other properties as and when they would be known to her.

28. The original Plaintiff sued for partition primarily upon a registered deed of partial partition having been executed by and between Defendants 1,2 and 3 (who were the only Defendants in the original suit) on 29th July, 1973. She sued within 12 years of being excluded from the HUF properties under the said Partition i.e. within the statutory period prescribed under Article 110 of the Limitation Act. The said partition deed Exhibit-512 shows Defendant No.1 to be the Karta of the Joint Hindu Undivided Family, Defendant No.2 as the coparcener of the said Joint Hindu Undivided Family and Defendant No.3 as a Member of the said Joint Hindu Undivided Family. It recites that the Joint Hindu Undivided Family (HUF) is entitled interalia to immovable properties situated at Pune and Kolhapur which came to be partitioned between them. It further recites that the bungalow located at the property in Kolhapur was permitted to be used for the last several years by the original Plaintiff Lady Ramabai Patwardhan, the Dowager Ranisaheb of Jamkhandi as a Social obligation accepted by the members of the HUF. Defendant No.2 who was allotted the said property upon the said partial partition undertook to fulfil that obligation as

the continuing obligation for and during the life-time of the original Plaintiff. It further recites that the parties to the Deed of Partition agreed to continue thereafter as a HUF in respect of all other Joint Family properties described in the Schedule to that document. The aforesaid declarations were accordingly made by Defendant Nos.1 to 3. As per this deed of partition, properties mentioned in the Schedule thereto came to be divided by metes and bounds among them. Each became the owner respectively of the property allotted to him. The other properties were agreed to continue to be joint. Each party released the other properties and conveyed them to the other as per the allotment. Each affirmed that there were no encumbrances of parties or any obligations attached to any of the properties except the aforesaid obligation towards the original Plaintiff. The parties therefore agreed that the original Plaintiff would be allowed to reside in the bungalow Parshuram Niwas at Kolhapur, during her life time without let or hindrance and free of rent. The parties agreed to deliver the required title deeds and transfer the properties as agreed between themselves. The parties valued each of the properties and paid the required stamp duty thereon. The Schedule to the said document shows the partial partition of certain immovable properties i.e. lands and buildings held by the HUF along with other respective valuations which came to be allotted to each of

them as agreed by and between themselves.

29. Defendant No.1 has nevertheless claimed all the properties as having descended to him under the Rule of Primogeniture and as having been so accepted by the Government of India under the certificate of the President of India, (Which shall be dealt with presently). However, a new case is also sought to be made out in the arguments for Defendant No.1 that the Kingdom of Jamkhandi was bequeathed upon Shankarrao, thus divesting the original Plaintiff of any property whatsoever.

30. It can be seen that despite the case of the Defendants that the properties are not HUF properties but belong to the Ruler of Jamkhandi and hence were the absolute properties of that Ruler which descended upon Defendant No.1 as the eldest son of the Ruler by the rule of primogeniture, the partial deed of partition shows the admission of Defendants 1,2 and 3 that these were then HUF properties. Hence, to find out a way, the Defendants contend that the nomenclature of the said document is incorrect and that in fact it was a gift deed executed in favour of Defendant NO.2 and must be read as such. However, a reading of the entire document as a whole shows it to be nothing but a partition Deed. It canot be read as containing a gift of only one of the properties mentioned therein. The properties which have

been allotted to Defendant No.1 & 3 under the same document in fact show the partition between the members of the HUF. Besides, no gift tax which was then payable is shown to be paid.

31. Having thus noted that the properties mentioned in the deed of partition are HUF properties, we now examine Plaintiff's claim for a share therein. The original Plaintiff claims to be the member of that HUF. She has applied for her share in the property upon the partition being made by the male members of the HUF. Her claim is in her capacity as a Hindu widow and as a member of the HUF under the uncodified Hindu Law relating to partition. The genealogy set out above shows the Defendants who executed the partial partition, their father Parshuram II, his father Shankarrao and his father Sir Parshuram Bhau, the Rajesaheb of Jamkhandi as the generations upon whom coparcenery interest would devolve from and survive. The original Plaintiff falls within the said 4 generations. She therefore claims to be a widow of a deceased coparcener and a member of the HUF. This HUF would therefore consist of Sir Parshuram Bhau, his son Shankarrao, his son's son Parshuram II and his son's son's sons Defendants 1 and 2. The first three from these having expired, Defendant No.1 became and claims to be the Karta as shown in the Partition Deed itself. The HUF until then consisted of aforesaid 4 generations. It is the

Plaintiff's case that the coparceners of these generations, if alive, would therefore be entitled to a share on partition being claimed by any of them. Upon their death their widows would be entitled to claim partition.

32. The Plaintiffs have shown this position in law of a Hindu Coparcener under paragraph 2(1)(iii) of the uncodified Hindu Law as explained in paragraph 213 in Mulla's Hindu Law, 17th Edition at page 315. The coparcenery would comprise of 3 generations next to the holder in unbroken male descent i.e. his sons, grandsons and great grandsons. It would be within 4 degrees counting from and inclusive of such ancestor. In this case that ancestor was Sir Parshuram Bhau, the Rajasaheb of Jamkhandi. Females could not be coparceners and hence the original Plaintiff claimed her right to demand her share upon the partition being effected by the male members of the HUF during her life time.

33. The Defendants contend that she is not the member of HUF and cannot claim any right to demand her share upon their partitioning the HUF properties (even if the properties, can be taken to be HUF properties, though they are the absolute properties of the Ruler of Jamkhandi). The Defendants rely upon paragraphs 306 to 318 in Mulla's Hindu Law illustrating the persons entitled to a share on partition. Reading

through this Chapter it can be seen that a Great Grand-Mother is not entitled to a share on partition. The persons enumerated in these paragraphs are Sons, Grand-sons, Great Grand-Sons, Minor Coparceners, Sons En Ventre Sa Mere, Posthumus Sons, Adopted Son, Illegitimate Son, Absent Coparcener, Purchaser, Wife, Widow, Widow-Mother and Grandmother. No female except a wife, widow, Widow-mother and Grandmother mentioned in Paragraphs 315 to 317 is entitled to a share on partition. The result will be that the Plaintiff being the Great Grandmother of Defendant No.1, the then Karta, would not be entitled to any share on partition.

34. Mr.Walawalkar, learned Counsel appearing on behalf of the Plaintiffs, has relied upon the Judgment of a Division Bench of this Court in the case of **Vithal Ramkrishna Vs. Prahlad Ramkrishna reported in 17 (1915) Bombay Law Reporter 361** holding that a step grand-mother is entitled to a share on partition. Original Sanskrit texts, learned commentaries and Court decisions were gone into before laying down the propositions. That is also because a grand-mother is female entitled to such share under the uncodified Hindu Law. The case of a great grand-mother, though falling within 4 generations including the holder and 3 generations excluding the holder, is not included as a female entitled to a share

upon partition in the HUF of which she is a member. Nor any such decided case or authority or text was brought to our notice. The Plaintiff's case on partition of 1/4 of movable and immovable properties of HUF rests at that and cannot be accepted. It may be passingly mentioned that sections 6 and 8 of the Hindu Succession Act, which codify the earlier law, deal with Devolution of interest in coparcernery property and give the General rules of succession in the case of males. These two sections refer to Class-I and Class-II heirs mentioned in the schedule to the Act. The great grand-mother is not included in these two classes.

THE ALTERNATE CASE FOR 1/2 SHARE UNDER THE JAMKHANDI ACT:

35. By way of an amendment to the Plaint the present Plaintiffs have claimed 1/2 share in the properties of the HUF in place and stead of the original 1/4 share. This claim for the original Plaintiff is on the basis of the Jamkhandi State Act I of 1937. The said Act lays down the rights of the Hindu Widows in respect of the property to be acquired from the Males. The object of that act was to remove inequities and uncertainties in the Rules of Hindu Law in the matter of property to be acquired by widows from males and in the matter of their maintenance rights. It conferred certain rights upon them so as to raise their status to a satisfactory level, until then not available to them. Under Section 1 of the Act, a Hindu widow became a co-sharer in

place of her husband and acquired the right to demand partition of the joint family property to the extent of the share which her husband could demand. The husband of the original Plaintiff Sir Parshuram Bhau had only one son and one daughter. He was a coparcener along with his son in his HUF properties. He was entitled to a 1/2 share in those properties if he could have demanded a partition. The present Plaintiffs' claim that 1/2 share could have been obtained by the original Plaintiff as a co-sharer in place of her husband upon her husband's death under Section 1 of the Jamkhandi Act. Consequently the plaint came to be amended.

36. The Defendants contend that the properties of the Ruler of Jamkhandi were impartiable properties. None could have demanded a partition of the properties of the Ruler. In fact the Ruler himself could not demand such partition. The original Plaintiff also did not ask for partition, though the Jamkhandi Act applied to her. That was because no partition of the Rulers' properties could be sought. They were his absolute properties and do not belong to any HUF. Therefore those properties could devolve only by succession. The Ruler in fact executed the Will on 15th January 1918. His son Shankarrao became the absolute owner under the Rule of Primogeniture. The Defendants further contend that knowing this state of affairs, the Ruler Sir Parshuram Bhau

bequeathed interalia Rs.1 Lakh to the original Plaintiff and Rs.1 Lakh to his daughter. He also granted further rights upon both these persons as enumerated in his Will including the maintenance of Rs.1250/- per month to be paid to the original Plaintiff. It is their contention that these amounts were rather steep in those times and upon that the legacy having taken effect, the original Plaintiff as well as Sir Parshuram Bhau's daughter cannot have any other interest in the properties of the Ruler. The Defendants contend that the said Act was a municipal law which did not apply to the Sovereign. The impartible properties of the Ruler cannot come under the scope of Section 1 of the Jamkhandi Act, and hence, the original Plaintiff cannot claim any rights thereunder.

37. That apart, the Defendants point out that in any event under Section 1(d) of the said Act the right to demand partition under that Act was alternate to the right of maintenance. This maintenance having been provided under the Will of Sir Parshuram Bhau and having availed of the same, the original Plaintiff had no right to demand partition of any of the properties.

38. As against this submission, it is contended on behalf of the Plaintiffs that the amounts which were paid to the

original Plaintiff were not by way of maintenance of a Hindu Widow as contemplated under the uncodified Hindu Law then in force. The amounts were paid out of the State funds and were a cash allowance to a Dowager. She was entitled to claim partition of the properties of the HUF to the extent of her husband's 1/2 share, since she had not been provided with maintenance from the HUF properties.

39. We have considered the rival submissions. The claim for 1/2 share is obviously on the basis of Section 1 of the Jamkhandi Act. It is claimed as a co-sharer coming in place of her deceased husband and it is claimed from a great grand-son. Explanation 1 to Section 1 of the said Act includes the Great Grand-son in the definition of a son. However, under Section 2 of the said Act, such a claimant has no power to alienate the right, title or interest in the family property. Under Section 4(b) of the Act the property thus obtained by her as a widow would return to the legal heirs of her husband upon her death. She therefore, would have only a limited interest in the properties during her life time. Besides, Section 6 of the Act provides as follows:- " Where the net annual income of the share of husband of the widow is more than Rs.1200/-, the share of her husband shall be deemed to be only such property as would yield an income of Rs.1200/-."

Essentially this Act is a legislation to prevent vagrancy. The object of the Act as stated therein shows that it would elevate the Hindu Widow to a satisfactory level, which until then she was not entitled to. But that was all. Thus under that Act the right to partition was only a limited right. The Hindu widow could therefore, claim maintenance to the extent of Rs.1200/- p.a. or a right to partition. This was without the right of alienation and for her life time only. The original Plaintiff's maintenance was far larger than the ceiling limit under the Act since she was given Rs.1250/- per month as against the ceiling of Rs.1200/-per annum. Hence, independent of the question of the applicability of the Act to the estaste of sovereign, she had no case to seek partition and that too with any right of alienation and for her share to devolve on her heirs.

40. The learned Civil Judge, Sr. Division, Kolhapur, has correctly considered that there was an option to be exercised by the original Plaintiff under the Jamkhandi Act between maintenance and partition. She opted to have maintenance, which is seen by the fact of its acceptance by her. He has further correctly considered that she is not entitled to 1/2 share in all the properties, though his observation that the properties do not belong to the family is incorrect.

41. The Judgment of the Learned Civil Judge, Sr. Division, Kolhapur is accordingly seen to be correct with regard to the aspect of partition and is required to be upheld to that extent. The claim by the original Plaintiff for 1/4th share and by the present Plaintiffs for 1/2 share is therefore rightly rejected.

42. Defendants 5,6 and 7 are stated to have been joined by way of abundant caution, though the Plaintiffs contend that they are not the members of the HUF in which the original Plaintiff was a member. Defendant No.5 has expired. Her heirs have been brought on record and are separately represented. Defendant No.5 is the sister of Parshuram II and the paternal aunt of Defendants 1 and 2. Defendant Nos.6 and 7 are the sister and son of Defendant No.1. The present Defendants 5A to 5E who are the heirs and legal representatives of Defendant No.5 claim only one immovable property from amongst the properties shown in the various schedules to the plaint. They claim the property under the gift made by Parshuram II in favour of his sister, the original Defendant No.5. The gift completes the transfer of the immovable property to the original Defendant No.5. The transfer has not been challenged. In any event since the original Plaintiff is seen to be unable to claim a share in the properties of the HUF, the challenge to the rights of the Defendants 5A to 5E consequent upon the Deed of Gift remains

purely academic and does not survive. The first point for determination is therefore decided against the Plaintiffs rejecting their claim for partition.

THE CLAIM FOR RESIDENCE IN LIEU OF MAINTENANCE:

43. The original Plaintiff has made a claim as a Hindu widow for the bungalow Parshuram Niwas in Kolhapur as a part of maintenance on the basis of her residing therein since 1954-55. She was paid Rs.1250/- per month upon her becoming a widow since 1924. That maintenance amount was the amount granted/bequeathed to her under the Will of her deceased husband, made by him in 1918 when he went to participate in the first world war. It was payable out of the State funds as a fixed amount ("Nakta Nemnuk"). She has therefore claimed that the same was not the maintenance under the provisions of Hindu Law in her capacity as a Hindu widow. It was payable from the estate of the late Sir Parshuram Bhau. The State was directed to make the payments and hence it went out of State funds. That amount continued to be paid to her even after the merger of State of Jamkhandi into the Union of India. At a later point of time the maintenance amount was raised to Rs.1600/- per month. The admitted correspondence between the parties shows that certain instalments of such maintenance were paid initially by Defendant No.1 and later claimed by him from Union of India.

44. The amount of maintenance payable to a Hindu widow

may be paid in installments or as a lumpsum taking into account amongst other the necessity of providing her a residence. The residence is an essential part of such maintenance. The extent of the maintenance depends upon the status of the parties, being the status to which the widow was accustomed to during the life time of her husband. In this case the original Plaintiff lived in one of her husband's properties during her marriage. She would be entitled to live in one of such properties after the death of her husband. Her claim to maintenance would therefore necessarily have to take into account the need for such residence. In the husband's Will or otherwise her residence in atleast one of the properties of her husband could not be, and was not, denied to her. The extent of her monthly maintenance amount therefore did not take into account her need and claim for residence. It matters not from which coffers that amount was paid to her. It was paid to her in her capacity as the widow of the late Ruler. Though such payment must be taken to be for her maintenance and would debar her from claiming any further amounts as maintenance by her under the provisions of Hindu Law, it cannot bar her claim for residence.

45. The original Plaintiff made a claim for separate residence years after the death of her husband. She is

stated to have resided independently in Jamkhandi and at Pune for several years after the death of her husband without any provision for residence being made for her by her family. The admitted correspondence relied upon by the parties in the suit shows her initial claim made in her letter dated 16th March 1954 addressed to the then Chief Minister of the State of Bombay, Exhibit-441 in evidence. One Mr.Narayan Dandekar, ICS who administered the estate of the late Parshuram II during the minority of Defendants 1 and 2 was entrusted the task of considering the original Plaintiff's claim to residence in one of the properties of her late husband. The correspondence shows other claims also made by her and negatived by the said Mr. Dandekar on behalf of the State, but finally granting her the entire Parshuram Niwas together with the necessary outhouses for her residence under the letter dated 16th October 1954. The said letter shows specifically the extent of the said grant. Since there is dispute as to what portion came to be in possession of the original Plaintiff and remained in her possession, it would be useful to set out a portion of that letter showing what was granted to her:

> ." ..... *to place at your disposal for your residence the Rajasaheb's* **furnished bungalow at Kolhapur together with necessary outhouses but**

> **without either of the two guest houses** upon the terms *and conditions already stated. I have however to enlarge this offer to the extent of placing the* **entire bungalow** at your disposal instead of only a *part of it*." (emphasis supplied)

46. She admittedly went to reside in the bungalow soon thereafter. She must be taken to have accepted the offer by performance and conduct. She therefore, came to be in possession of the entire bungalow with the outhouses excluding 2 guesthouses.

47. It may be mentioned though that at the time the offer was made the said Mr. Dandekar negatived her other claims regarding jewellery, maintenance allowance etc. The Defendants contend that the same was because she was not given residence by way of any right. However, in his letter dated 19th November 1954, Exhibit-426 the offer was initially made to put her in possession as a licensee. By her further letter dated 2nd February 1955 Exhibit-518 to Mr. Dandekar she expressed her anguish over the offer of the bungalow to her as a licensee. Accordingly Mr. Dandekar in the later letter dated 19th February 1955 Exhibit-428, in good taste, dropped his earlier conditions. A further letter of the

original Plaintiff dated 25th February 1955, Exhibit-429 in the evidence shows her delight and satisfaction at the grant of bungalow for her future residence and her having been enabled to go back into her family fold. Thus, the entire bungalow as also 2 outhouses but not 2 guest houses came to be offered to her.

48. The original Plaintiff admittedly resided in the bungalow Parshuram Niwas since 1955. She claimed that bungalow in her capacity as the widow of her deceased husband. That is her claim as a part of her maintenance as a Hindu widow. This was in addition to the cash allowance of Rs.1250/- p.m. (later enhanced to Rs.1600/- p.m.) given to her from State funds and which was then insufficient to provide her residence of the kind she was accustomed to as the Dowager widow of the late Raja of Jamkhandi. It is the Plaintiff's further case that under Section 14 of the Hindu Succession Act, 1956 that bungalow together with 2 outhouses was the property possessed by her as a female Hindu acquired by her as a part of her claim to maintenance since prior to the commencement of the Hindu Succession Act and accordingly she held that property as full owner thereof and not as limited owner under Section 14(1) of the said Act.

49. Lady Ramabai's original plaint was only for claiming

her 1/4 share in the HUF properties in view of the partial partition by and between Defendants 1, 2 and 3 dated 29th July 1973 consequent upon which she claimed her share as a member of the HUF consisting interalia of Defendants 1,2 and 3 and herself. The plaint has been later amended to include her claim of absolute ownership to Parshuram Niwas as the property possessed by her as full owner under Section 14(1) of the said Act.

50. It has been contended on behalf of the Defendants that this claim has been made after the death of the original Plaintiff by the present Plaintiffs, who brought themselves on record upon the cause of action surviving to them. It is contended that the scope of the suit cannot be expanded by a fresh claim made by the parties who bring themselves on record of the original suit pursuant to amendments in the plaint and must continue the suit only on the basis of the claim made by the original Plaintiff. That contention is erroneous. The question is with respect to the right of original Plaintiff to property and even in her plaint she had very much laid her claim to Parshuram Niwas. A different legal justification to the same is certainly permissible. The original Plaintiff would be entitled to amend her plaint to justify her claim for the properties upon whatever legal rights that were available to her. Consequently her heirs to

whom the cause of action survived would similarly be entitled to give such justification. It may be mentioned that their contest over the survival of the cause of action to them has already been decided by the trial Court and accepted by the Defendants consequent upon which the amendments have been made and the rights agitated by the parties.

51. Our attention is drawn to the Judgment in the case of **Radhakrishna Padhi Vs. Bhajakrishna Parda reported in AIR 1981 Orissa 63**. It is held therein that the heirs cannot set up a claim contrary to that made by the Plaintiff by an independent title. Similarly in the case of **Davappa Vs. Mallappa reported in AIR 1947 Bom. 307** it has been held that the heirs cannot assert their own individual hostile title to the suit. In our case the present Plaintiffs are claiming only as per the original Plaintiff's entitlements and not contrary or hostile to her.

52. The Defendants have disputed the original Plaintiff's right to absolute ownership of Parshuram Niwas on various distinct grounds which we shall presently examine. Thus it has been their initial case that she is only a gratuitous licensee of Defendant No.2 and that she has been permitted to reside in the said bungalow as per the partial partition dated 29th July, 1973. They contend that she was allowed to

continue to remain in a part of the bungalow on humanitarian grounds during her life time. Thus she was accommodated by Mr. Dandekar and allowed to reside in a part of the main building. The Defendants 2 & 3 claim to be in joint possession of the bungalow with her. They claim that the property "stood" in the name of Defendant NO.1 and was allotted to Defendant No.2 in the partial partition.

53. The Defendants claim that the residence was provided to her as a humanitarian gesture. However, the correspondence on record shows otherwise. The correspondence clearly points out to the grant made upon the necessity of providing residence to her in no capacity other than as a Hindu widow in one of the properties left by her late husband.

54. It also shows the extent of the grant. That was of the entire bungalow with 2 outhouses. She came to reside in that bungalow upon her unconditional acceptance in 1955 which is reflected in her expression of joy for coming "into the family fold". She resided therein till her death in 1988. She bequeathed the bungalow to her grand-daughter. The present Plaintiffs claim through her. They claim that the original Plaintiff had an absolute right in Parshuram Niwas under Section 14(1) of the Hindu Succession Act. The

Defendants claim that the Plaintiff's grant falls within Section 14(2) of the said Act and that she is not entitled to the beneficial provision under Section 14(1).

55. It would therefore, be essential to consider this statutory provision and the precedents thereunder which have laid down the depth of the right of residence with or without an amount of maintenance for a Hindu widow under this essentially progressive legislation.

56. It may be mentioned that under the Shastrik Law a Hindu woman had a right to be maintained by husband and from his property. This right continued after his death. Hence, a Hindu widow had a right to be maintained from the estate of her husband. This right included the right to reside in the property or atleast in one of the properties of her husband. Therefore, if she resided in any of her husband's properties it was pursuant to such right. That right was as a part of her maintenance. By virtue of such residence she came to be possessed of such property. This right was only a limited right. She could not alienate or transfer or bequeath that property. Her right therein extended only to her residence until her death. The property remained joint.

57. After coming into force of the Hindu Women's Right to

Property Act, 1937 (HWRPA) she got the same interest which her husband had upon his death in the coparcenery property under Section 3(2) of that Act. She could therefore, apply for partition of that property. If she applied for partition of the property her right would be severed. She would thereafter not be entitled to maintenance. She would however, be entitled to deal with the partitioned estate independently. If she did not apply for partition she could continue to reside in the property and also to get maintenance amount for her livelihood. After her death the property continued to belong to HUF and would thereafter devolve by survivorship.

58. Under the Hindu Women's Right to Separate Residence and Maintenance Act, 1946 (HMWRSRMA) the Hindu women could live separately from her husband under certain circumstances mentioned in Sections 2 & 3 of the Act and yet claim maintenance amount. She would then be entitled to separate residence as well as maintenance. She would be possessed of the property in which she resided even separately from her husband during his life time.

59. Under Section 14 of the Hindu Succession Act, which came into force on 17th June 1956, the limited interest which the Hindu widow had upon her residence in her husband's

property, which was possessed by her, became her absolute interest except if she was given a property for the first time under any grant, award, or decree etc. with an express limited right.

60. It would therefore be apt to set out Section 14 of Hindu Succession Act. Section 14 runs thus :

. *14. Property of a female Hindu to be her absolute property -*

> *(1). "Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.*
>
> *. Explanation - In this sub-section, "Property" includes both moveable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance or by gift from any person. Whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as*

Stridhan immediately before the commencement of this Act.

(2). Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribed a restricted estate in such property".

61. It would therefore have to be seen from the precedents as to what is a Hindu widow's limited right to any property prior to the coming into force of Hindu Succession Act which she was possessed of and how it would accrue to her. In this case the HWRPA did not apply to the original Plaintiff. Hence, her right has to be tested essentially under Section 14 of the HSA alone.

.(i) In the case of **G.T.M. Kotturuswami vs. Setra Veeravva reported in AIR 1959 SC 577**, the extent of the woman's "possession" under Section 14 of the Act is laid down. It was laid down that the word "possessed" is used in Section 14 in a broad sense. It is held to include "the state of owning or having in one's power".

(ii) In **Munnalal vs. Rajkumar reported in AIR 1969 S.C. 1493**, it was observed in para-16 as follows:-

> " *The Act confers upon the Hindu females full rights of inheritance and sweeps away the traditional limits on her powers of disposition which were recorded under the Hindu law as inherent in her estate*."

. The Supreme Court therefore, held that the right declared in favour of a widow under the actual division of her share was for property "possessed by" her and that was held to be "property" under the meaning of Section 14 of the Act. .(iii) In the case of **Kesu Pandu Yelawande Vs. Indubai Ankush Khandagale reported in 1970(72) Bombay Law Reporter 471 (D.B.)**, it was held by this Court that the Hindu widow having an interest in a HUF having possession of the family property must be taken to be "Possessed" of such property under Section 14 and she became full owner thereof under that Section. It was observed in that Judgment following the case of **Smt. Indubai Pandhari Naik Vs. Vyankati Vithoba Sawadha reported in AIR 1966 Bom. (D.B.) (At Nagpur) 64 = (1965) 67 BLR 612** that the word "possessed" meant the state of "owning and having a disposing power". In

Indubai's case, it was noted that HWRPA made substantial changes in the right of widows in joint family properties. By Section 3(2) thereof a widow was given on death of her husband as a member of the joint family the same interest which her husband had in the joint properties. These rights were held to be heritable and that they do not come to an end on widow's death. It was further held that an enactment such as the HWRPA was not an "instrument" under Section 14(2) and hence claimed possession thereunder could not be excepted under Section 14(2) of the Hindu Succession Act which sub-section was in the nature of an exception to Section 14(1).

61.(i) In the case of **Bapusaheb Bhausaheb Patil Vs. Smt. Gangubai reported in AIR 1972 Bombay 16** it has been held Per Palekar, J. (as he then was in this Court) that when right of Hindu widow was recognised in an Award by allotting property to her and the widow was in possession of such property on the date of commencement of Hindu Succession Act (HSA) she would get full ownership thereof. In that case 65 acres of certain lands and one house were allotted to a widow Hirabai under an Award. Out of these, 30 acres were earmarked for her maintenance and marriage of her 3 daughters and the rest of the property was to be retained by her only for her life-time with certain restrictions and thereafter it

was to revert to the opponents. It was argued on behalf of her successors that she became the full owner of all the properties including which she got under certain restrictions. It was argued on behalf of the parties claiming against them that the said interest was under an award and remained a limited interest for ever within the exception under Section 14(2) of HSA.

(ii). Negativing such a contention of limited right it was held that before HWRPA came into force in 1937, though the widow did not have a share in the joint family property, she had a right to be maintained out of a joint family property. Where that right to be maintained got crystalised, declared and recognized in an instrument, award or decree and it having been in existence antecedent to those documents,the same was held as one that could not be excluded and denied to her under Section 14(2) of HSA. It was laid down that only when such a right under such an instrument was given for the first time that it could fall within the exception contained in Section 14(2). Relying upon the case of **Yellawa vs. Bhiman Gauda, (1894) ILR 18 Bombay 452**, it was observed in paragraph 15 that though she may have had no title, she had a possessory lien for her maintenance which has been recognized "for more than a 100 years in this state" Consequently it was observed that even in those days the Court would not allow

any heir to recover the property from the widow without first securing for her an appropriate maintenance. She would be entitled to remain in possession until an arrangement for payment of maintenance was made for her. That itself was held to have constituted her to be a limited owner with some restricted powers to alienate the properties. It was also noted that this proposition has been accepted by the apex Court in **Ranibai vs. Yadunandan (AIR 1969 S.C. 1118)**. Hence, any property granted to Hirabai under any award would be in lieu of maintenance. It was observed in para 16 of the Judgment thus :

> "*16. It is true that the award (Exh-67) dated 15th October 2003 does not in so many words say that the suit properties were given to Hirabai in lieu of maintenance but we have no doubt that it was the case*."

63. Further it was observed in that paragraph that the arguments of the party claiming the properties against the widow was that he should get all the properties and that the widow should be merely paid some maintenance. That issue was before the Arbitrator. The parties were members of the joint family. The Arbitrator did not give merely an amount for maintenance to a widow but decided to make a liberal

provision for her in lieu of her maintenance. The award was therefore held to be in lieu of her maintenance for life with a very restricted power of alienation. That property was held to fall under Section 14(1) of the HSA. It was therefore, held that the widow was a "limited owner" within the concept under Section 14(1) and would become under the mandate of the said sub-section.

64. It was submitted by the Opponents that the award created a "restricted estate" in favour of the widow since it was under an award and properties acquired under decree or order of a Civil Court or award were specifically excluded under sub-section (2) of Section 14. The Division Bench overruled this argument in paragraph 19 by observing that the phrase property acquired "in any other manner whatsoever" under the explanation to Section 14(1) was wide enough to include property acquired under an award or decree.

65. It was observed in that Judgment in para 21 (at page 22 of AIR) that, when there is a redefinition or a recognition of an antecedent right to property, Section 14(1) will not cease to have effect. Section 14(2) will have effect only when the limited interest created in favour of the grantee has its foundation or origin in the grant itself.

66. Since the widow got her rights under HWRPA in 1937 she could not be prevented from claiming absolute interest under Section 14(1) and the award under which she got the property was not the source or foundation of the limited grant. In para-21, it was observed that a widow would be entitled to say :

> " *The property which I have now in my possession is in lieu of my share in the joint family property. I was given nothing under the instrument or decree. My antecedent right to a share in the property is merely translated in another form through the medium of instrument, decree or award and hence sub Section (2) does not apply to me*."

67. The old Shastrik Law was also considered in para 22 of that judgment wherein it was observed that the right to a share in the coparcenery property was equivalent to the right to maintenance and the share the widow got on partition upon coming into force of HWRPA was in lieu of her maintenance. If she got such a share then only her right to maintenance would cease. The phrase "in lieu of maintenance" used in the explanation to Section 14(1) was therefore significant. The Court therefore noted as follows :

> " *It appears to us that in the context of the Hindu widows the right to maintenance conferred under the Hindu law is indistinguishable in quality from her right to a share in the family property. That may well be the reason why the explanation to sub-section (1) of Section 14 of the Act makes the female allottee of property "in lieu of maintenance" as much a limited owner as when the widow acquires on "inheritance" or "at a partition". And if in the latter two cases it is conceded that sub-section (2) does not apply on the ground of antecedent right to the family properties, we do not see any rational justification to exclude a widow who has an equally sufficient claim over the family properties for her maintenance.*"

68. Consequently it is held that the award in the instant case was not the originator of that right and that right was in lieu of her maintenance.

69. The proposition of law laid down in that judgment has come to be approved specifically in the case of **Vaddeboyina Tulsamma Vs. Vaddeboyina Sesha Reddi reported in AIR 1977 S.C.1944 (para 7)** as a "well reasoned judgment". It has been

held that a Hindu widow always had a right to be maintained by her husband and out of his property. The property given to her is therefore in lieu of maintenance and is not given as a new right for the first time under any instrument. Such right to maintenance is her limited right which is enlarged by the statutory provision under Section 14(1). It is only when a fresh new right is given to her under any instrument (aside from her claim of maintenance) that Section 14(2) would get attracted as an exception to Section 14(1).

70. It has been held (Per P.N. Bhagwati, J.) in the case of **Vaddeboyina Tulsamma Vs. Vaddeboyina Sesha Reddi (supra)** that Section 14(1) covers every kind of acquisition of property by a female Hindu, including acquisition in lieu of maintenance, where such property was possessed by her at the date of commencement of the Act or subsequently acquired and possessed. Under that Section she became full owner of that property. It is further held that since Section 14(1) was calculated to achieve a social purpose by bringing about change in the social and economic position of women in Hindu Society, Section 14(2) must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision in Section 14(1). It was held that the scope of Section 14(1) must be read as large as possible and the scope of Section 14(2) must be confined to cases

where property was acquired by a female Hindu **for the first time as a grant without any pre-existing right. (Emphasis supplied)**. It was therefore held that when a Hindu female acquired property on a partition or in lieu of her right of maintenance it was by virtue of a pre-existing right and consequently it did not fall within the mischief of Section 14(2).

71. It has been held in paragraph 3 of that Judgment that the words "any property" are, even without any amplification, large enough to cover any and every kind of property since the object of the Section is to wipe out the disabilities suffered by her under the old Shastrik law, to abridge the stringent provisions against her proprietary rights and to recognize her status as an independent and absolute owner of the property. Thus it has been held that when any property is given to her under a pre-existing right, the possession of which she acquires makes it her absolute property. What the Court has to see is as to how she has come to be in possession for the first time. A widow already living in the HUF property and who is liable to be maintained and allowed to remain therein acquires possession pursuant to her marriage itself. She has a pre-existing right to be maintained and to be provided residence. Hence the property which she comes to be in possession of and which she

continues in possession of is under a pre-existing right in lieu of maintenance. She does not get that property for the first time under any instrument. That property, therefore, becomes her absolute property.

72. In the aforesaid case (supra) how the widow came to be in possession of that property is considered in paragraph 6. She claimed maintenance out of joint family properties. Her claim was decreed. She applied for execution of the decree. The parties entered into a compromise. She was given a limited interest in that compromise. She came to be in possession of that property under the compromise. She had a pre-existing right to be entitled to maintenance out of her husband’s estate. Her possession under that right, though giving her a limited interest, was held to have become her absolute property under Section 14(1).

73. The test which was applied by the Honourable Supreme Court in that case was whether she acquired the property under the compromise by virtue of a pre-existing right or whether she acquired it for the first time as a grant "owing its origin to the compromise alone and to nothing else". It was held that she had a pre-existing right by her very nature being a Hindu widow entitled to possession of the HUF property by way of maintenance and that right would ripen

into a charge and that she did not acquire any new right under the compromise. Such compromise would not be a grant without any pre-existing right in the widow and would merely record the true legal position.

74. It is observed in that Judgment that if Section 14(2) is interpreted such as to include all instruments, grants or awards where a limited interest is only given to a widow, it would be the easiest thing for the dominant male to provide that the Hindu female shall have only a restricted interest in the property and thus make a mockery of Section 14(1). In fact such a grant itself would be an invalid grant if it confers only limited interest upon a widow, thus rendering the social purposes of the law frustrated.

75. In paragraph 32 at page 1963 (of A.I.R.) of that Judgment it has been further held Per Fazal Ali,J. drawing from the case of **Eramma V. Verrupanna in (1966)2 SCR 626 (AIR 1966 SC 1879)** that all that is required for the widow to acquire the absolute right of ownership in the property possessed by her is "some vestige of title". It is explained that her possession must be under some "title or right and not be that of a rank trespasser."

76. In the case of Eramma (supra) it had been held that

in order to acquire full title under Section 14 of the HSA the widow should have acquired some kind of title to that property. It is held that therefore, under Section 14(1) any illegal possession of Hindu female is not contemplated. It would therefore, not confer any title on a mere trespasser.

77. In **Mangal Singh Vs. Smt. Rattno reported in AIR 1967 SC 1786** it has been held that what Section 14(1) contemplates is "the property **possessed** by a female Hindu" and not merely "the property **in possession of** a female Hindu". It is explained that the phrase covers not merely her actual possession or constructive possession but possession in law. The constructive possession may be through a lessee, mortgagee or licensee . It is observed that the expression "possessed by her" instead of expression "in possession of" was intended to enlarge the meaning of the expression. A property is possessed by a person if he is its owner, even though he may, for the time being, be out of actual physical possession or even constructive possession. Hence, it is held that Section 14(1) would be applied to any property which is owned by a female Hindu even though she was not in actual, physical or constructive possession of that property.

78. It is is observed that even if she is out of actual

possession of the property, it must be held to be possessed by her, if her ownership rights exist and she is capable of obtaining actual possession of it.

79. In **Sukhram Vs. Gauri Shankar reported in AIR 1968 SC 365**, it has been held in paragraph 4 that the Hindu widow derives the interest which her husband had in the HUF property and possesses that property within the meaning of Section 14(1) of HSA and that therefore when 'she became "full owner" of that property, she acquired a right unlimited in point of user and duration and uninhibited in point of disposition.'

80. This judgment was referred in paragraph 34 of V. Tulasanma (supra) by Fazal Ali, J. to observe that this case indirectly supports the view that if the intention of the legislature was to confer absolute interest in the widow, no limitation can be spelt out either from the old Shastrik law or otherwise to defeat the intention. At the end of the paragraph it was observed as follows:-

> *." therefore, where once a property is given to the widow in lieu of maintenance and she enters into possession of that property, no amount of restriction contained in the document can prevent her from acquiring absolute interest in the property because*

the contractual restriction cannot be higher than the old Hindu Shastrik Law or the express words of the Act of 1956."

81. In V. Tulasanma (supra) it is further held, following the case of **Badri Pershad Vs. Smt. Kanso Devi (AIR 1970 S.C. 1963)** that the grant of property in any award despite being called a "limited estate" made a widow full owner thereof since her limited interest was on the basis of 'pre-existing right' and 'not a new grant for the first time'. It is therefore, concluded that the word "acquired" under Section 14(1) has to be given the widest possible meaning.

82. In paras 42 and 43 of v. Tulasanma (supra) the judgment in the case of B.B.Patil Vs. Gangabai, AIR, 1972 Bombay page 16 (Per Palekar J.) (supra) has been considered by Fazal Ali, J also. In that case the daughters of the widow who came into possession of an immovable property granted by the Arbitrator in an Award were held entitled to succeed to those properties, their mother having been held to have had full ownership rights thereto.

83. Consequently in paragraph 44 of the Judgment in V. Tulasanma (supra), the propositions of law with regard to the

widow's absolute right in the property in lieu of her maintenance came to be laid down by Fazal Ali, J. in his separate but concurring judgment. In nutshell they are as follows :

(i). The widow's claim to maintenance is undoubtedly a tangible right though not an absolute right to the property so as to become a fresh source of title.

(ii). Under the HWRPA her claim to maintenance becomes crystallized into a full-fledged right for any property allotted to her in lieu of maintenance and any property allotted to her in lieu of maintenance becomes property to which she has a limited interest. By virtue of Section 14(1) of 1956 Act, this limited interest is enlarged into an absolute right.

(iii). Section 14(2) of HSA applies only to cases where grant is not in lieu of maintenance or in recognition of pre-existing right but confers a fresh right or title for the first time and whereunder certain restrictions are placed. However, if the grant is merely in recognition of a pre-existing

right to claim maintenance, the case falls squarely within the explanation of Section 14(1).

84. The original Plaintiff's claim in our case is one such and therefore, squarely falls within Section 14(1).

85. In the case of **Bai Vajia Vs. Thakorbhai Chelabhai reported in AIR 1979 S.C. 993**, it has been confirmed that the widow's right to maintenance is a pre-existing right. It is held that when she is given any property in lieu of such maintenance it cannot be said to be given to her for the first time. Her right to maintenance as also her right to claim property in order to maintain herself is an inherent right under the Hindu Law and any property given to her in lieu of maintenance is merely in recognition of the claim or right which she possessed before. It cannot be therefore said that such a right was conferred on her for the first time by virtue of the document concerned and that before the existence of that document she had no vestige of claim or right at all.

86. In the case of **Thota Sesharathamma Vs. Thota Manikyamma reported in 1991 (4) SCC, 312**, the object of Section 14 of the HSA has been laid down Per Kasliwal, J. as the provision to remove disability on women imposed by law to

achieve a social purpose by bringing change in the social and economical position of women in Hindu Society. In that case the Constitutional provisions contained in Article 15(3) of the Constitution of India with regard to making special provision to accord to women socio-economic equality are considered. Section 14(1) is held to be such a legislation. It has been held in that judgment that both the sub-sections of Section 14 read with the explanation to section 14(1) are to be pragmatically considered as a constituent integral scheme. Hence, it is held that the interpretation of the proviso contained in section 14(2) or the explanation should not be allowed to eat away the vital veins to full ownership accorded by Section 14(1).

87. In the case of **Mangatmal Vs. Punni Devi reported in 1995 (6) SCC 88** it has been held (per Bharucha J.) that the property acquired by a Hindu woman in lieu of her pre-existing right to maintenance converts limited ownership right into full ownership. In that case, prior to the coming into force of the Hindu Succession Act, an allotment was made by an Arbitrator under an award in which a woman was given an option to choose one of the 2 properties along with a cash component "for her life for residence and maintenance". Following the judgment in V. Tulsamma Vs. V. Shesha Reddy (supra), it was held that the same was not the grant for the

first time without any pre-existing right. Where such property was possessed by her at the date of the commencement of the Act she became its full owner and such property was covered under the expression "any property" which was large enough to cover any and every kind of property. Since Section 14(1) was enacted with the object of wiping out the disabilities from which a Hindu women suffered regarding ownership of property under the old Shashtrik Law, it was held that :

> " *Section 14 was a step in the direction of practical recognition of the equality of the sexes and was meant to elevate women from a subservient position in the economic field to a pedestal where they could exercise full powers of enjoyment and disposal of property held by them as owners, untrammelled by artificial limitations placed on their rights of ownership by a society in which the will of the dominant male prevailed to bring about a subjugation of the opposite sex."* (para 16)

88. It was therefore held that Section 14(1) was to be read so as to leave as large a scope for its operation and that Section 14(2) had to be confined to cases for property acquired without any pre-existing right **for** the first time

under an instrument. Consequently it was observed that if she had a vestige of title, or if it was acquired in lieu of maintenance it would suffice and that the right to receive maintenance was sufficient title, and the possession pursuant to such right to receive maintenance was the limited right or interest.

89. Hence if a woman had been an owner earlier she would not need any further uplifting provisions. As an owner she could have independently possessed that property. The Section was enacted because she was not an owner, but merely possessed the property. That possession was because she was required to be maintained as a Hindu woman and as a Hindu widow by her husband and out of his properties. Such right is called "limited ownership", a legal term otherwise unknown to jurisprudence. It need not be mentioned that ownership rights are necessarily absolute. It need also hardly be mentioned that a Hindu woman always had the right to be maintained. Such maintenance partakes of the provisions for food, clothing as well as shelter. Since the right to be maintained is implicitly in the relationship of a marriage, any provision for the women’s or the widow’s upkeep is in lieu of such right of maintenance. A woman would therefore always have a pre-existing right as a condition of her marriage. A widow can therefore, be possessed of a dwelling

unit or one of the properties of her husband, after his death as a consequence of the right of maintenance which always existed. That is a pre-existing right.

90. It therefore follows as a matter of corollary that only if her husband had more than one property and she was already maintained out of one of them or was otherwise not required to be maintained but was either awarded, gifted or bequeathed any property for the first time as such then alone the exception contained in Section 14(2) would apply for, then alone that property would be given to her "for the first time".

91. Consequently the Judgment in the case of **Eramma Vs. Verrupanna reported in AIR, 1966 SC 1879** relied upon by the Defendants has been distinguished in this judgment. [It was also explained by Fazal Ali J. in Tulsamma (supra)]. In that case the woman had no vestige or title. She came in illegal possession and consequently it was held that no title can be conferred upon a trespasser without any right to property by virtue of possession in such a woman. Had even such a trespasser been given any right in the property trespassed upon, it would have contradicted the whole jurisprudence of juridical possession and ownership based on title.

92. As far as a Hindu woman's right to residence is concerned, the court held that it is covered in the concept of maintenance. In paragraphs 19, 20 and 21, it observed as follows:-

> *"19. Maintenance, as we see it, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head. Provision for residence may be made either by giving a lump sum in money, or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. Where provision is made in this manner, by giving a life interest in property for the purposes of residence, that provision is made in lieu of a pre-existing right to residence and the Hindu lady acquires far more than the vestige of title which is deemed sufficient to attract Section 14(1).*
>
> *20. We are supported in the view that we take by*

Mulla's Hindu Law (16th Edn.) which sets out the position in law prior to the Act. The manager of a joint Mitakshara family is under a legal obligation to maintain all male members of the family, their wives and their children. On the death of any one of the male members he is bound to maintain his widow and his children. The obligation to maintain these persons arises from the fact that the manager is in possession of the family property (para 543). An heir is legally bound to provide, out of the estate which descends to him, maintenance for those persons whom the late proprietor was legally or morally bound to maintain (para 544). A wife is entitled to be maintained by her husband, whether he possesses property or not. When a man with his eyes open marries a girl accustomed to a certain style of living, he undertakes the obligation of maintaining her in that style (para 554). A widow who does not succeed to the estate of her husband as his heir is entitled to maintenance out of his separate property as well as out of property in which he was a coparcener at the time of his death (para 559). A Hindu widow is, in the absence of special circumstances, entitled to reside in the family dwelling house in which she lived with her husband

(para 562). The maintenance to be allowed to a widow should be such an amount as will enable her to live consistently with her position as a widow, with the same degree of comfort and reasonable luxury as she had in her husband's house, unless there are circumstances which affect, one way or the other, her mode of living there. In determining the amount of maintenance the Court should have regard, inter alia, to the provision and status of the deceased husband and of the widow and the reasonable wants of the widow, including not only the ordinary expenses of living, but what she might reasonably expend for religious and other duties incidental to her station in life (para 566). Where an undivided family consists of two or more males, related as father and son or otherwise, and one of them dies leaving a widow, she is entitled to reside in the family dwelling house in which she lived with her husband. If the house is sold by the surviving coparceners without necessity, the sale does not affect her right, and the purchaser cannot evict her until another suitable residence is found for her (para 573). A widow who is entitled to maintenance may sue, inter alia, for a change on a specific portion of her husband's estate for her maintenance and

residence (para 579).

*21. The Hindu Adoption and Maintenance Act, 1959, was enacted to amend and codify the law relating to adoptions and maintenance among Hindus, and it defines maintenance in Section 3(d) to include "***(i)** *in all cases, provision for food, clothing,* **residence** *education and medical attendance and treatment*." (Emphasis supplied)

93. In the case of **Raghubar Singh Vs. Gulab Singh (Per Dr. Anand J.) reported in (1998) 6 SCC page 314**, it has been held, following the case of **Vaddeboyina Tulsamma (supra)**, that the right to maintenance of a Hindu widow exists under Shastrik Law. It was a pre-existing right. It was later recognized under HWRPA and Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 (HMWRSRMA). In that case it was held that even though Hindu Adoption and Maintenance Act (HAMA) was not in force in the area where the widow lived, it cannot be said that she did not possess property of her deceased husband and had no pre-existing right to maintenance. It was held that the aforesaid Acts had only given statutory backing to a position recognized under the Shastrik Hindu Law. Hence, when the widow was in possession of the property of her husband she had a right to

be maintained out of it and she retained that possession in lieu of her right to maintenance which was a pre-existing right. She became owner of the property for her life-time under the Will in that case. Her limited interest was automatically enlarged into an absolute right under Section 14(1). Section 14(2) did not get attracted.

94. In the case of **Beni Bai Vs. Raghubir Prasad reported in (1999) 3 Supreme Court Cases 234**, it has been held (Per Justice V.N. Khare) following the case of **Vaddeboyina Tulsamma Vs. Vaddeboyina Sesha Reddi and Raghubar Singh Vs. Gulab Singh (supra)** that Section 14(1) of Hindu Succession Act applied to cases where the right of the Hindu widow was in lieu of maintenance or in recognition of her pre-existing right as provided under Shastrik Law. In that case the widow was bequeathed the property in which she resided under the Will of her husband. It was held that the conferment of limited interest by virtue of the Will was in lieu of maintenance and in recognition of her pre-existing right and it was consequently transformed into an absolute right under Section 14(1) of the Act. Hence, though under the Will executed on 16th October 1935 she was given only a life interest, after her husband died in May 1943 and she entered into possession and use, she could execute a gift deed in favour of her daughter as an absolute owner. This

becomes relevant in the facts of our case also.

95. In paragraph 3 of that Judgment at page 236 it has been observed that under the old Shastrik Hindu Law, marriage between Hindus was a secrement. The husband was under a pious obligation to maintain his wife during his life time and after his death. Under the Hindu Women's Right to Property Act, 1937 and the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 (HWRPA & HMWRSRMA) the right of maintenance was preserved as a pre-existing right. Under the Hindu Succession Act the equality in the right to property came to be established. Hence under Section 14(1) her limited interest got automatically enlarged into absolute right.

96. It can therefore be seen that a Hindu widow who has been allowed to reside in any property always has a pre-existing right therein by virtue of her marriage under the Shastrik Law requiring her to be given maintenance.

97. The aforesaid Judgment upon scanning the case of **Vaddeboyina Tulsamma Vs. Vaddeboyina Sesha Reddi** reiterated the proposition laid down therein and consequently held that Section 14(2) only applied to cases where grant was not in lieu of maintenance or any recognition of pre-existing rights

but conferred a fresh right or title for the first time creating an independent or a new title in her favour.

98. Her residence is therefore always in lieu of such maintenance. That therefore falls under Section 14(1) of HSA. Such residence may be coupled with a sum given to her for her maintenance. Hence, the provision of food, clothing and shelter constituting bare necessities of life can be satisfied. Any other grant, to any other property, either of her husband, or of her family or otherwise may fall within Section 14(2) of HSA.

99. The clear proposition that emerges from these aforesaid Judgments spanning 3 decades is that a Hindu widow is entitled to be maintained by her husband and out of his property, during his life time and after his death. That maintenance includes residence. Such maintenance may be of a particular sum per month which would enable her to obtain the basic needs of food, clothing as well as shelter. It may be partly in cash and partly by way of residence itself. Such is her right which emanates from the Shastrik Law. Based upon such right if she is granted any residence by her husband or by a testamentary disposition or if she is even otherwise given that right and comes to be possessed of any property it is in lieu of her maintenance. Such right, which

is a pre-existing right, would always blossom into full ownership enabling her to deal with, enjoy, use, transfer or bequeath that property absolutely. Such is the case of the original Plaintiff. She was given Parshuram Niwas to reside-in in 1954-55. That was because she was the Dowager of the late Sir Parshuram Bhau. She had the right to reside in one of his properties. She was allowed such residence. It may or may not be that it was granted to her in full and final settlement of all her claims. It may be in addition to the cash allowances which she received out of the State funds. It may even be after that allowance was taken to be her maintenance amount. She was given the entire of that property including 2 out-houses and excluding 2 guest-houses. She came to be the absolute owner of that property on 17th June 1956 when the Hindu Succession Act came into operation. It matters not that she also received the cash allowance/maintenance amount of Rs.1200/- p.m. and later Rs.1600/- p.m. till her death.

DEFENDANTS' CONTENTIONS:

100. It is contended on behalf of the Defendants that because Lady Ramabai did not claim Parshuram Niwas as her absolute property under Section 14(1) of Hindu Succession Act in the original plaint, the present Plaintiffs are precluded from claiming it thereafter by way of an amendment. That

argument is covered by and rejected in the case of **Dr.Mahesh Chand Sharma Vs. Ms.Raj Kumari Sharma reported in AIR 1996 SC 869** in which the Apex Court has allowed the plea of the enlargement of the widow's estate under Section 14 to be raised for the first time even before the Supreme Court even though it was not expressly pleaded or relied upon in the plaint. In that case she had claimed her right in the suit property as also other properties though she had not invoked or relied upon section 14 specifically nor was there any reference to it in the judgment of the High Court. In para 29 of the judgment, the Apex Court held that section 14 contains a highly salutary proposition and it operates on its own force once the facts requisite for attracting its application are established.

101. The Defendants have relied upon Eramma Vs. Veerupana (supra) to contend that to claim full title under section 14, a Hindu widow must have some right and that illegal possession or that of a trespasser is not protected. We have already noted as to how this judgment has been explained by Fazal Ali J. and distinguished by Bharucha J. In the facts of our case, it is not possible for us to accept that original plaintiff's possession of Parshuram Niwas was not based on any legal right.

102. Reliance was placed by the Defendants on **Master Karmi Vs. Amru reported in AIR 1971 SC 745** wherein it has been held Per Hegde J. that :

> " *A widow who succeeds to the properties of her deceased husband on the strength of a Will executed by her husband in her favour cannot claim any rights in the properties other than those conferred by the Will.*"

Here we must note that in that case, the very purpose of the bequest was to give the widow a life-interest under that instrument and to bequeath the property to specified other legatees. If such an interest becomes an absolute interest, the later bequest would fail. That would not be the intention of the testator. The Court would therefore, not grant such Hindu widow any rights other than what is granted under the bequest, because the Court would have to honour the testator’s intention. In our case, no such restricted bequest has been made of any immovable property in favour of the original Plaintiff. She was put in possession of Parshuram Niwas in lieu of her right to maintenance, a right which she always had as a Hindu widow and which cannot therefore be curtailed under section 14(2).

103. Reliance was placed on **Kalawatibai Vs. Soiryabai reported in AIR 1991 SC 1581** wherein alienee from a Hindu widow prior to 1956 was held not to acquire any limited interest in the estate or to be a limited owner to avail the benefits of Section 14(1) of the HSA, where the alienation was prohibited by law or beyond permissible limits (para 11 and 13 of the judgment). Consequently it was held that an alienee could not become a limited owner or holder of a limited estate as understood in the Hindu Law and alienation without legal necessity could be assailed by the reversioner. Similarly it was also held that any alienee cannot acquire any right by adverse possession against the reversioner during the life time of the alienor.

104. In that case the two parts of Section 14 have been explained - one explicitly satisfying the essential requirement of the applicability of the section and the other part, consequently showing the consensus that arise out of it. It is held that one cannot operate without the other and neither can be read in isolation and both are integral parts of the Section. Consequently, the case of such an alienee from a Hindu widow is like a trespasser as in the case of **Eramma Vs. Verrupanna (supra)**. She cannot claim any right of limited ownership. It was held that she would fall within the exception as having been given the property "for the

first time", since such an alienee can never have a pre-existing right on that property.

105. Para 16 of the judgment lays down the law -

> *"16. Further Hindu Succession Act did not obliterate Hindu Law. What has ceased to be operative after coming into force of the Act under Section 4 is text or rule etc. for which provision is made in the Act. And under Section 4(2) any law in force immediately before the commencement of the Act ceased to have effect if it was inconsistent with any provision of the Act. Therefore except to the extent provision has been made in Section 14, that is, enlargement of the estate of limited owner, the Hindu Law in other regards remained operative. There is no provision in the Act which deprives reversioners of their rights except to the extent mentioned in Section 14. In Radha Rani v. Hanuman Prasad, AIR 1966 SC 216, this Court overruled the decisions of the Allahabad and Patna High Courts that there were no reversioners or reversionary rights after 1956 and held, 'it is open to reversioner to maintain a suit for declaration that an alienation made by a Hindu female limited owner before the*

coming into force of Hindu Succession Act, 1956 was without legal necessity and was not binding upon reversioners'."

106. The case of original Plaintiffs for maintenance is completely on a different footing. She always had such a right. She could be given any residence as a part of such a right. That pre-existing right had only to be affirmed by the grant of a residence in lieu of maintenance, it becomes full ownership under section 14(1). The judgment in Kalavati's case does not affect her claim at all.

107. Defendants relied upon the case of **Gulabrao Balvantrao Shinde v. Chhabubai Balwantrao Shinde reported in AIR 2003 SC 160** where despite alienation of the property, a mere possession of a widow was held not to enlarge into full ownership right by invoking Section 14 of HSA. In that case it was not the case of the widow, and no evidence was led to prove that the properties were given to her by way of maintenance or in lieu of maintenance. In our case, necessary amendment has been carried out and a plea based on the rights of the original Plaintiff under Hindu Succession Act has been taken.

108. In our case, a bulk of correspondence between the

original Plaintiff and Mr. Dandekar shows how Parshuram Niwas was given to the original Plaintiff in no capacity other than as her right of maintenance by way of her residence in one of the family properties left by her deceased husband.

109. In a recent judgment on this issue relied upon by the Defendants in the case of **Ramvishal v. Jagannath reported in (2004) 9 SCC 302, (Per Variava, J.)** it has been held that widow must be not only possessed of the property, but that she must show that she got possession in lieu of right of maintenance or in arrears of maintenance or under the partition. In that case the widow was governed by Rewa State Land Revenue and Tenancy Code, 1935 which did not confer right to any maintenance in the joint family property to any females. It was not shown that she got into possession of the property by way of any right of maintenance. Hence, it was held that the **"mere right of maintenance without actual possession and acquisition in any manner"** is not sufficient to attract Section 14. In our case, however, the original Plaintiff had a right in lieu of maintenance and got into possession of the property before the Hindu Succession Act came into force. She therefore, had a **right of maintenance** with **actual possession and acquisition by** actually residing therein and hence Section 14(1) of HSA gets attracted.

110. It is argued on behalf of Defendant No.1 that in the case of **V.V. Subba Rao Vs. C.S. Ranganayakamma reported in AIR 1997 SC 3082** the recognition of the pre-existing right of a widow was to be seen upon how she understood that right to be. In that matter, it was argued that when a Gift Deed executed after a compromise alienating the property acknowledged that the widow had only a limited estate under the compromise, Section 14(2) applied. Defendant No.1 chooses to draw an analogy to that case by contending that in the letter of the original Plaintiff addressed to Mr. Dandekar on 2nd February 1955 she herself contended that the grant would be by way of a lease or a licence. The contention is entirely incorrect. The letter dated 2nd February 1955, (Exhibit-427 in evidence) shows that the original Plaintiff took exception to any such thought. The letter shows that she desired to have the property as her residence- to pass her last days in the family house and as a member of Jamkhandi Ruler's family. The reply sent by Mr. Dandekar on 19th February 1955 (at Exhibit 428 in evidence) records an apology for hurting her feelings by such wrong interpretation and expression. It therefore, concludes that the original Plaintiff would be given Parshuram Niwas for her residence upon all conditions to be dropped. The possession of Parshuram Niwas is consequently obtained by the original

Plaintiff as her future residence in a capacity as the member of the family of Jamkhandi Ruler, a right which can be enjoyed by none other than a Hindu widow in her HUF. She came to enjoy that right for no reason other than that she had such a right pre-existing on that date in law. The very contents of the admitted correspondence relied upon by both the sides unmistakably show her right and the admission of such right by the grant of the residence.

111. It is argued by the Defendants that because the original Plaintiff was maintained out of the State funds or otherwise, she could not claim residence. In this connection, we must note that the maintenance amount was decided in 1918 when Sir Parshurambhau executed his Will. It was paid from 1924 when he expired and the Will took effect. It continued to be paid through the decades until it was revised after independence by the Union of India upon her request to the then Minister of the State of Bombay to Rs.1600/-. During such times the amount, howsoever princely it may have been initially, became insufficient to enable her to obtain a separate residence outside the properties left by her husband to allow her to live in the same status and comfort as she did as his Queen during his life time. Therefore, although the amount of maintenance granted to her under the Will of her husband and paid out of State funds was

sufficient initially for her to reside separately, when it became inadequate and insufficient in the later years (upon the prices of real estate considerably rising), it necessitated her to reside in one of her husband’s properties to which she was otherwise entitled. Hence her claim thereto came to be granted by the Administrator and the grant was therefore as a part of right of maintenance. This was because she needed the residence aside from the cash allowance for her subsistence.

112. As observed by Bharucha J. in Mangatmal (supra) relying upon Mulla"s Hindu Law, the following propositions emerge:-

(a). The Manager of a HUF is required to maintain all male members of the HUF, their wives and their children.

(b). On the death of any male member he is bound to maintain his widow and his children.

(c). The obligation to maintain these persons arises from the fact that the manager is in possession of the family property.

(d). A widow is entitled to maintenance out of the

separate property of her husband as well as out of the property in which he was the coparcener at the time of his death if she does not succeed to that property as his heir

(e). A widow is entitled to reside in the joint family house in which she lived with her husband.

(f). The maintenance amount allowed to her should be such an amount as will enable her to live consistently with her position as a widow, with the same degree of comfort as she had in her husband's house.

(g). Even the sale of the family house does not affect her right to reside therein and the purchaser cannot evict her until another suitable residence is found for her.

(h). A widow is entitled to have a charge on a specific portion of her husband's estate for her maintenance and residence.

(i) Consequently the right to residence is implicit in the right of maintenance.

(j) The law is now codified and section 3(d) of Hindu Adoption and Maintenance Act defines "maintenance" to include provision for food, clothing, residence, education and medical attendance and treatment.

113. The residence of Dowager Queen is therefore, implicit in atleast one of the properties left by her deceased husband. It was therefore upon that pre-existing right that she came to be possessed of Parshuram Niwas in 1955, months before the coming into force of Hindu Succession Act. Hence, the denial of that right by the Defendants is contrary to the spirit, purpose, intent and object of that ameliorative provision.

114. The Defendants further contend that the possession, if any, enjoyed by the original Plaintiff was only part possession of the bungalow. They claim to have some tenants in one of the structures on the said property. The Defendants have produced before us a sketch plan showing the entire property on a plot of land admeasuring 5 acres. It can be seen that the tenants would be in one of the 2 guest houses on the said property due to which the original Plaintiff was not granted possession of those guest houses.

Though there is no evidence on this count, it can be seen that in view thereof a specific distinction is made between the **"necessary outhouses" (which are 2 in number) and "2 guest houses"** in the aforesaid correspondence of Mr. Dandekar. There is nothing to show the actual possession of any of the Defendants in any portion of the main bungalow or the outhouses on the said property, though the Defendants have made a passing reference to joint possession in their written statement. In fact, the correspondence shows that Mr. Dandekar requested the original Plaintiff to allow the Khasgi Karbharis (private officers) of the State, who came for State purpose, to occupy one room and bathroom during their stay. This in fact shows the actual possession of the entire bungalow with the original Plaintiff for which the permission was sought by Mr.Dandekar.

115. The Defendants have further claimed that the property Parshuram Niwas stood in the name of Defendant No.1. He paid taxes thereon, maintained the property as well as the staff thereon, carried out repairs, sold grass which grew on the property, plucked the fruits of a tamarind tree on the property, had a telephone installed therein, put his watchman on the property, claims to have shown it in the Returns under the Urban Land Ceiling Act, 1975, had his furniture, curtains and cutlery therein and got a plan sanctioned for development

of the open land surrounding the bungalow. However, such overt acts do not confer ownership rights and are of little consequence.

116. In fact the admitted correspondence contained in the letter dated 7th July 1971 (Exhibit-494) shows that the original Plaintiff was offered alternate accommodation by Mr. Dandekar which shows the admission of her right to residence in the bungalow. On one occasion when she was called upon to vacate to facilitate repair work of the bungalow, other arrangements were offered to be made for her "only because of compelling forces" and she would take the furniture and fittings from Parshuram Niwas. The apologetic note in the said letter shows the acceptance of her exclusive and absolute right in Parshuram Niwas, the arrangements to be made notwithstanding. It is seen that whatever be the legal position of the parties, the original Plaintiff was in occupation of Parshuram Niwas, her expenses being incurred by the HUF.

117. The Defendants claim to be cutting and selling grass on the property without any objection from the original Plaintiff or her heirs. Upon that premise they claim to be in joint possession. The plot of land admeasures 5 acres. It admittedly has one bungalow, 2 outhouses and 2

guesthouses. The open land is therefore a part of it. The correspondence shows the grass auctioned and sold by the State of Jamkhandi and not personally by the Defendants. By mere cutting and removal of grass, joint possession in the entire land cannot be claimed by the Defendant - it goes alongwith the property which it surrounds.

118. The Defendants have relied upon several letters from the correspondence marked 472, 473 and 523 in evidence showing the original Plaintiff, and later the present Plaintiff No.1 having written to Mr. Dandekar for permission to purchase one plot in the compound of Parshuram Niwas. The Defendants thereby contend that the original Plaintiff hereof did not claim the entire property as hers and did not enter into possession of the open land. In this connection, it must be remembered that she was the Dowager Queen. She had to be maintained in the style and status which she was accustomed to during her marriage with her husband. She was given the entire property except 2 guest houses by Mr. Dandekar. The correspondence shows that she lived in a palatial bungalow. Such residence cannot be taken to be bereft of the open land. Any such exclusion had to be expressly made out. That was not done by Mr. Dandekar. A plot of 5 acres is not so large a plot as to exclude the open land in a palatial property. Besides, this was one of the

many properties of her late husband, the Raja of Jamkhandi. His Dowager wife could not be granted a part of one of those properties as her residence in lieu of her maintenance, her letters to Mr. Dandekar, notwithstanding. In fact the administration of the entire property is shown to have continued under Mr. Dandekar after the State of Jamkhandi merged in the Union of India. The original Plaintiff continued to receive the cash allowance as did Defendant No.1 as set out in the Agreement of Accession. Hence, the correspondence.

119. It is shown on behalf of the Plaintiffs that in fact it has been the case of the Defendants 2 and 3 in their written statement that the said property devolved by survivorship from Sir Parshuram Bhau to Shri Shankarrao and thereafter to Parshuram II and upon his death in 1953 to the Defendants as his heirs. Consequently the case of the Defendants 2 and 3 in their written statement is that they cannot be divested of the Estate after 3 generations. This very case shows that the said property (as also several other such properties initially of Sir Parshuram) devolved by survivorship which is a legal consequence only of a HUF property. Only the properties which survived to the heirs of a HUF can be partitioned. The case in the written statement of survivorship and the partial partition of 1973 therefore conclusively show the nature of the properties as well as

how the Defendants took them to be.

Defence based on the Rule of Primogeniture :

120. The Defendant No.1 contends that the property of Parshuram Niwas was not a HUF property. It belonged to the Raja of Jamkhandi. It therefore devolved by the Rule of Primogeniture from the late Sir Parshuram Bhau upon Shri Shankarrao, then upon Parshuram II and then upon Defendant No.1. Defendant No.1 claims to have been re-granted the said property by the Union of India upon merger of the State of Jamkhandi with the Union of India as per the Agreement of Accession made by Defendant No.1 as the then Raja of Jamkhandi with the Secretary, Government of India, Ministry of States dated 19th February 1948, Exhibit-492 in evidence.

121. It may be mentioned that the respective cases of Defendant No.1 on one hand and Defendant Nos.2 and 3 on the other with regard to Parshuram Niwas are contradictory.

122. Defendant No.1 claims that under Article 3 of the said Agreement of accession, Defendant No.1 came to be a full owner and was put in use and enjoyment of all the private properties enumerated under that Agreement. Under the certificate appended to the said agreement the Government of India recognised Defendant No.1 as the sole successor to all

private properties, movable and immovable, held by him as the Raja of Jamkhandi without any objection to transfer them to him. It is very important to note that Parshuram Niwas is not included in the said list of private properties of the Raja of Jamkhandi enumerated in the said agreement. No further list of private properties including Parshuram Niwas has been produced by Defendant No.1 as furnished to Government of India as mentioned in Article 3 of the said Agreement. Parshuram Niwas therefore cannot be taken to be the property that was re-granted to Defendant No.1 by the Union of India under the said agreement Exhibit-492.

123. How the parties have actually treated the said property is therefore the most material factor and the strongest circumstantial evidence with regard to their intention. The conduct of the Defendants 1,2 and 3 in later years makes this position absolutely clear. That conduct is demonstrated in the partial partition dated 29th July 1973 itself. It is material to note that the recital in the said Partition Deed shows Defendant No.1 as the Karta of the HUF, Defendant No.2 as the coparcenor and Defendant No.3 as the member of the HUF. Under the said Partition Deed Parshuram Niwas is allotted to Defendant No.2. It therefore unmistakably shows Parshuram Niwas as the HUF property. It is material to note that it recognises the social obligation

of the HUF to permit the original Plaintiff, her right to residence in the said property **"which was her personal residence for the last several years"**.

124. The partitioning of that property as late as in 1973 after the possession of the original Plaintiff blossomed into full ownership in 1956 is, therefore, contrary to law. That document claims to partition the property including a dwelling house (Parshuram Niwas) which was the absolute property of another not taken to be a member of that HUF. The rights of the original Plaintiff which were of full ownership in that property cannot be divested by the Defendants or abrogated in any manner by any partition or otherwise.

125. The Defendants claim that the said property cannot be claimed by the Plaintiff under Section 14 as the Hindu Succession Act does not apply to that property. The Defendants rely upon Section 5(ii) of the HSA to claim their rights upon the inapplicability of the Act. Section 5 of HSA deals with properties to which the Act was not to apply. Section 5(ii) runs thus :

> *"5. Act not to apply to certain properties.- This Act shall not apply to-*
>
> *(i) .....*

(ii) Any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India by the terms of any enactment passed before the commencement of this Act."

126. The Defendant No.1 claims that Parshuram Niwas has descended upon him upon the Union of India re-granting innumerable properties to him as the Raja of Jamkhandi upon the Agreement of Accession. The Defendants claim that Parshuram Niwas is one such property. All the properties so re-granted to Defendant No.1 would be the properties that descended to him as a heir to the Ruler of Jamkhandi. If Parshuram Niwas had been such a property, it would have been shown in the list annexed to the Agreement or in a subsequent list furnished by Defendant No.1 to the Union of India. Further, if it was so, the Defendants would not have shown it as HUF property in their partial partition deed dated 29th July 1973 or treated it as such. The execution of that deed is the strongest circumstance to show how the Defendants themselves treated that property. The Defendants have not shown which is the estate which descended upon Defendant No.1 under the Agreement of Accession other than the properties in the list of the said Agreement.

127. Hindu Succession Act is Progressive social legislation. It codifies the then existing Hindu law relating to succession, the main source of which was usage and custom. Any exception to the said Act or the inapplicability of the Act must, therefore, be read strictly. The exclusion of any estate must, therefore, be specifically shown by the party claiming the exception. Such an exception must therefore be interpreted restrictively. In this case the burden would be upon the Defendants to show which **"estate descended"** upon Defendant No.1. In the agreement for Accession the list of the properties or estate which descended upon Defendant No.1 is shown. Under Article 3 only the succession to rights, privileges, dignities and titles are guaranteed. As against that under Article 5 the full ownership, use and enjoyment is granted of all private properties (which are enumerated in the list thereto) as distinct from State properties. Similarly under the certificate appended to the said agreement Defendant No.1 is certified the sole successor of all private properties. All the private properties enumerated in the list can therefore be taken to be the estate which descended upon him. The estate which would descend upon him can only be private properties. The very purpose of executing the agreement of Accession by Defendant No.1 would be to specifically state and mention the properties which would descend upon him.

This would be only private properties as distinct from State properties. This cannot include any properties other than what were listed therein or in any further list furnished by Defendant No.1 to the Government of India. Parshuram Niwas is not shown in the list annexed to the said Agreement. No further list is produced.

128. It is the contention on behalf of Defendant No.1 that all the private properties of the State of Jamkhandi have been held by him absolutely upon the regrant by the Union of India. Defendant No.1 has relied upon a number of Judgments with regard to his absolute right in all private properties which are stated to be "innumerable" private properties that descended upon him as the eldest heir of his father late Parshuram II. It has been held in the judgment of the Constitution Bench in the case of **Kunwar Shri Vir Rajendra Singh Vs. Union of India reported in AIR 1970 SC 1946**, that the "right to hold" private properties of the last deceased Ruler depends upon the personal law of succession to such property". Consequently, in that matter, the right to succession to private properties was held to be independent of any covenant". It was held that the recognition of Rulership by the President of India does not amount to recognising any right to private properties of the Ruler. The distinction between the recognition of the Ruler and

succession to private properties is made in that Judgment. The right to private properties of Rulers is held to be a matter of recognition of Rulership and the recognition of Rulership is not an indicia of properties. However, it was held that the party claiming the property said to belong to the Ruler has to establish such claim.

129. The case of **Pratapsinhji v. Commissioner of Income Tax, Gujarat-III reported in 139 (1983) Income Tax Reports 77**, was the case of the Ruler of Patdi who entered into the covenant under which the State of Patdi merged in Kathiawar State. It was held by a Division Bench of Gujarat High Court that covenant executed by him with Government of India ensured only his Gaddi according to law and custom under Article XIII of the covenant. That Article did not recognise the rule of primogeniture to each and every estate of the Ruler of the merged State. It was held in that case that the properties held by such Ruler ceased to be impartible and regained the attributes of HUF properties. Consequently the income derived from these properties was held assessable as that of HUF.

130. In our case, it is not shown whether Defendant No.1 has treated the immovable properties which are stated to have descended upon him as impartible properties or as HUF

properties and what income-tax returns are filed by him after the Agreement of Accession was executed by him in 1949. However, Defendant No.1 has indeed executed the Deed of Partition in 1973 (as also the earlier Deed of Partial Partition on 18th August 1956, with which we are not at present concerned) signifying his treatment of properties including Parshuram Niwas as his HUF properties of which he was the "Karta".

131. Following the decision of Privy Council in the case of **Shiba Prasad Singh Vs. Rani Prayag Kumari Debi reported in AIR 1932 PC 216**, it has been held in Pratapsinhji (supra) that "**an estate which is impartible by custom cannot be said to be the separate or exclusive property of the holder of the estate**". Hence, when the holder succeeds by primogeniture, it would be a part of the joint estate of the HUF. The incidents of HUF being the right of maintenance and ownership would remain in such property, though impartible, and it has to be regarded in law as HUF property.

132. Considering various Sections of the Hindu Succession Act, it has been held in Pratapsinhji (supra) that the Act has brought changes in the Rules of the Hindu Law relating to impartible property. The enactment seeks to abolish the impartible estates except those expressly saved by Section

5(ii) of the Act. Upon considering the covenant entered into between the Rulers of the erstwhile States and the Union of India at page 239 of the volume of the white paper on Indian States, issued by Government of India, Ministry of States, more specifically Article XI (under which the Ruler of each covenanting State was entitled to full ownership use and enjoyment of his private properties), it was held that the rule of primogeniture does not apply to such properties. It would govern only the question of succession to impartible estate and consequently only to the succession to Gaddi of each covenanting State according to law and custom and the privy purses were abolished. It was, therefore, held that the rule of primogeniture does not apply in general to succession of all types of estates by the descendants of the erstwhile Rulers (in that case, the State of Patdi). It was held further that Section 5(ii) of HSA exempts only that estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India.

133. Considering Section 4 of the Hindu Succession Act which gives overriding effect of the HSA upon any other law in force and Section 5(ii) thereof it was held that the estate could continue to be impartible only until the succession opened under the HSA. It was observed that any

custom with regard to the rule of primogeniture or impartible estate is to cease to have effect in view of the clear provisions in Section 4 giving overriding effect over any such custom or usage. It is observed that giving effect to any custom would result in an absurd result. Hence, it was held that once the property claimed to be impartible at one time ceased to be impartible in view of the HSA, it would have all the attributes of HUF properties. In that case they were directed to be assessed as such.

134. Consequently, in our case, the private properties exclusively claimed by Defendant No.1 were to be only the properties so listed by him and the claims of third parties such as that of the original Plaintiff were not affected thereby.

135. (i) The judgment in **Revathinnal Balagopala Varma v. His Highness Shri Padmanabha Dasa reported in 1993 Supp(1), SCC 233** was relied upon by the Defendants. At page 246 thereof, it was held (Per Ranganathan J.) that a declaration made by the sovereign that the properties were his private properties showed what was not to be surrendered to the Government of India. It related to the issue as to whether the properties belonged to them in their personal capacity and not in their capacity as Rulers as between the Ruler and

the Government of India. The properties declared as personal properties were to be retained by the Ruler without being surrendered to the Government of India. Those were the properties included in the list of personal properties furnished by that Ruler in terms of the covenant under the agreement entered into with the Government of India. It was held in para 5 that this would not prejudice the rights, if any, of third parties in the properties so declared. It created no title in the Ruler to any properties other or higher than what belonged to him immediately before the appointed day. It did not effect in any way the nature of any property in his hands or the claims, if any, which others might have had against the Ruler qua those properties.

(ii) In para 57 of that judgment (Per Ojha, J.), a reference is made to a judgment of the Gujarat High Court in **D.S. Meramwala v. Ba Shri Amarba Jethsurbhai - ILR (1968) 9 Guj 966**. A few paragraphs are quoted therefrom wherein it is stated that the Chief of a sovereign estate would hold the estate by virtue of his sovereign power and not by virtue of municipal law. He would not be subjected to municipal law and he would in fact be the fountain-head of municipal law. The municipal law cannot determine or control the scope and extent of his interest in the estate or impose any limitations on his powers in relation to the estate. It was

therefore held in that case that it was difficult to see how the ordinary incidents of ancestral coparcenery property would be applied to that estate. However, in para 63 and 64, Ojha J. observed as follows:-

> "*63. In this connection it has to be kept in mind that the mode of succession of a sovereign ruler and the powers of such a ruler are two different concepts. Mode of succession regulates the process whereby one sovereign ruler is succeeded by the other. It may inter alia be governed by the rule of general primogeniture or lineal primogeniture or any other established rule governing succession. This process ends with one sovereign succeeding another. Thereafter what powers, privileges and prerogatives are to be exercised by the sovereign is a question which is not relatable to the process of succession but relates to the legal incidents of sovereignty.*
>
> *64. If someone asserts that to a particular property held by a sovereign the legal incidents of sovereignty do not apply, it will have to be pleaded and established by him that the said property was held by the sovereign not as sovereign but in some other capacity. In the instant case apart from*

asserting that the properties in suit belonged to a joint family and respondent 1 even though a sovereign ruler, held them as the head of the family to which the property belonged, the appellant has neither specifically pleaded nor produced any convincing evidence in support of such an assertion."

In our case, it has clearly come on record that Parshuram Niwas was not a property listed as the property of the sovereign in the agreement with the Government of India. The Respondents have subjected it to a partition on their own showing. This being the position, the law, which would apply to the property of a sovereign, would not apply to the claim of the original Plaintiff with respect to Parshuram Niwas. The reliance by the Defendants on the judgment in the case of Revathinnal Varma, which was with respect to the disputes concerning the properties of Maharaja of Travancore, is misplaced.

136. In the case of **Maharaja Pratapsingh Vs. Maharani Sarojini Devi reported in 1994 Supp(1) SCC 734**, the succession of the Indian Ruler's estate under the rule of primogeniture to all the properties of the Ruler except the property held in a capacity other than that of a sovereign is established. In that case it is held that rule of

primogeniture and impartibility of estate in case of sovereign Ruler are presumed to exist.

137. In that case also the covenant from a similar Agreement of Accession containing similar articles was considered. Under Article XII of the covenant, a clear distinction was made between private properties and State properties. The private properties are to be left out in accordance with the list of properties showing those private properties and an inventory of the properties made showing those private properties. The property in dispute having been purchased by the Ruler during the time of the British Government Benami in the name of another person was shown in the list of properties by the Ruler and submitted as one of his private properties under Article XII of the covenant. It was held that the actual user and enjoyment would be the decisive factors to show which properties were private properties mentioned in the list as distinct from State properties. Upon considering a number of documents it was held that the properties claimed as private properties were shown to be such by actual user and enjoyment. It is observed in that case that the properties claimed as private properties were treated as joint family properties, an aspect supported by documentary evidence. These were the properties of which inventory was taken and a list was prepared. The

Honourable Supreme Court went through extensive documentary evidence in that case to see an application made by the Ruler for making an inventory of private properties, a relinquishment which showed the properties to be joint family properties, a letter of Administrator relating to Bank Accounts which required succession by the ordinary mode for the estate of which the property was a part and concluded from all these documents that the properties were **"treated"** as HUF properties.

138. After considering paragraph 230 A of Mulla's Hindu Law (16th Edition) at page 766 as also the Rajyasabha Debates at pages 7115 and 7116 on the Bill of HSA in 1954 along with Section 5(ii) of HSA, the Apex Court concluded that the rule of primogeniture continued until it was repealed. The rule under the uncodified Hindu Law relating to non-State private properties of erstwhile Rulers was that it would be of the absolute ownership of the Ruler and the incidents of coparcenery could not be attributed to such properties. The Government of India considered it not proper that an enactment of general nature should set at naught the agreements and the covenants which the Government of India had solemnly entered into with the Rulers of various States to be integrated into India. Hence, under Article XII(1) of the Covenant the Ruler would be entitled to full ownership,

use and enjoyment of all the private properties as distinct from State properties belonging to him, and under Rule XII(2) the Ruler was required to furnish before the specified date the inventory of all private properties claimed by him as such.

139. It has been held in that Judgment in para 78 that there is a clear distinction between the private properties and State properties and that such private properties even belonging to the Ruler must be in his use and enjoyment even earlier and hence, only the properties which were recognised as such private properties earlier were alone to be left out and submitted for recognition as such. All other properties were the public properties which merged in the Union of India.

140. In essence, what has been held under that Judgment is that the properties of the Ruler were presumed to be impartible. These properties were either private or public properties. The private properties had to be specifically listed upon an inventory being prepared and the list was to be submitted by the Ruler before a specified date. All those properties of which the Ruler had "user and enjoyment" were held to be private as mentioned in the list. The "user and enjoyment" were the determining factors. Hence much depends

on how the sovereign in fact "treated" those properties.

141. It will have to be seen how in our case the properties claimed as impartible properties which descended upon Defendant No.1 were "treated" by him. Amongst others, Parshuram Niwas was brought under the hammer of partition, which is an incident only of HUF property. It was allotted to Defendant No.2 under the Partition of 1973. Defendant No.1 seeks to oust the Plaintiffs from the property claimed to have descended to him which he has "allotted" to his brother. We may also mention that this property is not listed as one of the private properties of Defendant No.1 in the Agreement of Accession. It remains at that. It is not known how it has been assessed since.

142. It is argued on behalf of the Plaintiffs that in any event the presumption of impartiabilty laid down in this Judgment is the rebuttable presumption of law. It has been rebutted by the admission of the Defendants that at least Parshuram Niwas was a coparcenary property by virtue of the execution of the Partition Deed of 1973 as well as by a separate admission in para 5 of he additional written statement of Defendants 2 & 3 that it was a coparcenary which devolves by survivorship from generation to generation. It is is therefore, contended that these properties were and more

specially Parshuram Niwas was treated as HUF property and that the Defendants cannot approbate and reprobate with regard thereto.

143. Defendants Nos.2 and 3 relied upon a judgment in the case of **Shantadevi Pratapsingh Gaekwad Vs. Sangramsingh Pratapsingh reported in AIR 1996 Gujarat 72**. Therein, it has been held by a Single Judge that the non-State private properties of the recognised ex-Ruler was his absolute properties and not coparcenary properties. In the facts of that case, it was held that the right of maintenance and residence of members of Royal family was not an enforceable right and it was in the nature of bounty of the sovereign. That ruling is however, subject to that property being so listed in the agreement with Government of India, used and enjoyed which was done in that case of Baroda Maharaja as can be seen from para 5 of that judgment. In our case, Parshuram Niwas was not listed in the princely properties entered with the Government of India.

144. Similarly in the case of **Maharaja Jagat Singh Vs. Lt. Col. Bhawani Singh reported in AIR 1996 Delhi 14** wherein it has been held that the private properties of erstwhile Ruler did not became HUF properties. In that case the private properties came to be shown in the income tax and

wealth tax returns as HUF properties. It was held that they could not be assessed as HUF properties. There is nothing in that judgment to show that those properties were actually used and enjoyed as HUF properties. Hence, it was held that they did not became HUF properties merely because the Jaipur State merged with the Government of India and the status of individual properties cannot be converted to HUF properties merely thereby.

145. In our case Defendant No.1 has neither listed Parshuram Niwas as his private property in the Agreement of Accession nor used and enjoyed it absolutely and to the exclusion of all others. He has in fact entered into a Partition Deed and allotted it to his brother. He has not shown his actual possession in Parshuram Niwas even prior to the partition. Parshuram Niwas therefore, is not covered under Section 5(ii) of the Hindu Succession Act as a property descended upon Defendant No.1 under any covenant or agreement entered into by him with Government of India. It is a property which was possessed by the original Plaintiff since 1955 as a part of her right to maintenance. She came to have an absolute right in that property, Parshuram Niwas after 1956. The claim of absolute ownership of Parshuram Niwas in favour of the original Plaintiff, therefore, is established. Consequently, the counter claim of Defendant No.2 of

possession the said property fails on merits.

146. We may mention that the contention of the Plaintiffs that the counter claim is barred by limitation is erroneous as the cause of action in such a claim being a continuous cause of action, accrues every day that a gratuitous licensee, continues in possession.

147. The learned Civil Judge, Senior Division, Kolhapur has not correctly considered the aspect of the absolute ownership rights of the original Plaintiff in Parshuram Niwas. His conclusion that because she accepted the cash allowance of Rs.1250/- from the State funds she was only entitled to maintenance amount and therefore did not obtain full right in the property in 1956 is clearly incorrect. Further his observation that her claim of jewellery, maintenance allowance etc. was negatived by Mr. Dandekar because she had no legal right in the property and that allowing the Khasgi Officers to stay in 1 room and 1 bathroom (when they visited Kolhapur) did not give her full domain of the property is incorrect. His observation that the allotment of the bungalow to Defendant No.2 subject to the obligation of allowing the original Plaintiff to reside therein shows only her right to reside during her life-time is incorrect. His reading of the cases cited in the judgment

to conclude that the original Plaintiff had only a "limited right, title and interest" shows a complete negation of the law laid down since 1962 in the aforesaid decisions supra.

148. The Judgment of the learned Civil Judge, Senior Division, Kolhapur refusing to grant the Plaintiffs the exclusive right in Parshuram Niwas as the heirs of the original Plaintiff, is accordingly required to be set aside.

THE CLAIM TO STRIDHAN:

149. The Plaintiffs have claimed a declaration that the original Plaintiff had become the absolute owner of the stridhan mentioned in Schedule B-4 and B-5 to the Plaint and have claimed possession thereof and failing which its market value. Stridhan - women’s property - is the property which belongs to a woman either by gift or bequest from any source. The original Plaintiff was granted Rs.1 lakh under the Will of her late husband as her Stridhan since 1924. That amount has not been claimed by her in the suit. The Will of her late husband Exh.590 dated 15th January 1918 does not mention any other movables or ornaments bequeathed to the original Plaintiff as her Stridhan.

150. The admitted correspondence relied upon by the

parties shows 5 lists of ornaments being lists A, B, C, D & E, out of which she claims List E as the ornaments prepared to her taste, for her use and given to her from time to time by her late husband since her marriage. The claim is first made in her letter dated 11th September 1925 Exhibit-434. In the said letter list A shows the ornaments restored by her to the State Jamdarkhana. List B relates to the ornaments given to her son Shri Shankarrao. List C shows the ornaments given to her daughter-in-law. List D shows the ornaments given to her for her use (which are later shown to have been returned by her to the State Jamdarkhana upon the receipt dated 5th February 1926.) (Exhibit-439). List E is shown to be the properties claimed by her. List Exhibit-E in the said letter is the same as Schedule B-4 to the Plaint. List D in the said letter is equivalent to Schedule-B in the Plaint. The Plaintiffs, therefore, claim the ornaments entrusted by her to the Jamdarkhana under the receipt dated 5th February 1926 (Exhibit-439) and the ornaments prepared and made specially for the original Plaintiff.

151. The letter of Shri Shankarrao to his mother, the original Plaintiff dated 5th June 1926 Exhibit 440 shows that he had taken over charge of the entire Jamdarkhana including the jewellery and gold articles retained by the original Plaintiff as per the list Exhibit-E thereto (which is the

same as Schedule B-4 to the plaint). It can therefore be seen that there were some ornaments contained in the said list E which were made for the original Plaintiff but taken over by her son Shri Shankarrao in 1926. The admitted correspondence further shows the original Plaintiff having claimed the said ornaments as her Stridhan in her letter dated 16th March, 1954 addressed to the Then Chief Minister of the State of Bombay Exhibit-442 referring to the aforesaid receipt of her son Shankarrao.

152. The subsequent letter dated 16th October 1954 by Mr. Dandekar shows the issue of jewellery, Stridhan etc. taken to have been closed during the life time of Shri Shankarrao and his son and which was refused to be reopened upon the original Plaintiff's later claim. A further letter of Mr. Dandekar dated 19th November 1954 Exhibit-426 once again refers to the original Plaintiff's claim for residence at Parshuram Niwas being considered upon the clear acceptance by her that matters regarding jewellery, maintenance allowance etc. were concluded in the negative. The original Plaintiff's subsequent anguish at the harshness of the conclusion of the suit claim in her letter dated 2nd February 1955 Exhibit-518, which led to the withdrawal of the conditions by Mr. Dandekar and the expression of his apology in that regard in his letter dated 19th February 1955

Exhibit-428, does not show the reversion of the original Plaintiff's claim to her Stridhan. In fact the grant of the entire Parshuram Niwas for her residence was unconditionally accepted by the original Plaintiff "with great delight and satisfaction" for being "enabled to be back into the family fold" in her letter dated 25th February 1955 Exhibit-429. The original Plaintiff thereafter never made any claim to her Stridhan. It is argued on her behalf that she had rejected Mr. Dandekar's condition and hence cannot be taken to have unconditionally accepted the offer of the bungalow giving up her claim to Stridhan. However, we cannot ignore that her claim for Stridhan was denied by Mr. Dandekar in 1955. The claims for movable properties are required to be made and filed within 3 years of denial of those claims. Consequently her claim in suit for Stridhan is clearly barred by the Law of Limitation. The Plaintiffs' case with regard to Stridhan is not sustainable as correctly held by the learned Judge.

CROSS OBJECTIONS

153. The cross objections are filed by Defendants No.2 and 3. Grounds No.1 to 9 therefrom are with respect to the finding on Issue No.5 in respect of the Will dated 17th March 1980 left behind by Lady Ramabai in favour of her grand-daughter Vijayadevi, viz. that the Will is genuine,

legal and valid. There are no circumstances to suspect its genuineness. The Will was written by original Plaintiff in her own handwriting and the attesting witnesses, who are respectable persons, were examined. The discussion on the issue is cogent and there is no reason to interfere in this finding.

154. Grounds of cross objections No.10 to 15 are on Issue No.14 of the suit being time barred. It is submitted that original Plaintiff was excluded from enjoyment of the property since 1924 and that there was one earlier partial partition in 1956. The learned Trial Judge has rightly decided that issue by noting that right from 1955 the original Plaintiff was staying in Parshuram Niwas. She was never excluded from the joint property any time before also. Her suit is within 12 years after she was sought to be ousted by a partial partition in 1973 and which she came to know thereafter. This is permissible under Article 110 of Limitation Act. She was never informed about the earlier partial partition of 1956. She had sought a declaration of her ownership and partition of her share in time. There is no substance in these objections. Her claim to stridhan is however time barred as held by us above.

155. Cross objection No.16 is on the ground of res

judicata, in view of the order dated 22nd May 1985 made by the Competent Authority under the Urban Land Ceiling Act. That order was without proper opportunity to the original Plaintiff and, in any case, it cannot prevent the competent Civil Court from declaring the share of parties on the basis of their legal rights. There is no substance in this objection either.

O R D E R

156. Under the circumstances, the Appeal succeeds. The Cross Objections stand dismissed.

157. The judgment and order of the learned Civil Judge, Senior Division, Kolhapur dated 1st May 1997 in Special Civil Suit No.18 of 1979 dismissing the said Suit with costs is set aside.

158. The said Suit filed by the original Plaintiff is hereby decreed for the claim of absolute ownership of the property at Kolhapur named Parshuram Niwas together with the 2 outhouses and the open space but excluding the 2 guesthouses which are tenanted to tenants.

159. The original Plaintiff’s claim to 1/2 or 1/4 of the properties of her late husband Sir Parshuram Bhau Patwardhan

is dismissed.

160. The counter claim of Defendant No.2 is dismissed.

161. Parties will bear their own costs in the Suit as well as in the Appeal.

(H.L.GOKHALE, J.)

(ROSHAN DALVI, J.)

161. After the judgment and order is pronounced, Mr.Walawalkar, learned counsel for the Appellants, informs that as a condition of stay, an amount of Rs.5,000/- per month was being deposited in the Trial Court. He submits that inasmuch as the Plaintiffs' claim for Parshuram Niwas has been upheld, the Plaintiffs should be permitted to withdraw the amount which has been deposited in the Trial Court.

161. Mr.Sakhare, learned counsel for Respondent No.2, makes a request that the Plaintiffs should maintain status quo with respect to the property which is decreed in their favour for a period of 12 weeks from today inasmuch as the Defendants may carry this matter further to the Supreme Court. In view of this request, Mr.Walawalkar makes a statement that the Plaintiffs will maintain status quo for a period of 12 weeks. At the end of this period of 12 weeks,

subeject to further orders that may be obtained by the Defendants, the amount deposited in the Trial Court will be released to the Plaintiffs.

(H.L. GOKHALE, J.)

(ROSHAN DALVI, J.)